

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-10050 (\_\_\_\_)

(Joint Administration Requested)

**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) PROHIBITING  
UTILITY COMPANIES FROM DISCONTINUING, ALTERING, OR REFUSING  
SERVICE, (II) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE  
ASSURANCE OF FUTURE PAYMENT, (III) ESTABLISHING PROCEDURES  
FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE, AND  
(IV) GRANTING RELATED RELIEF**

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, these “Chapter 11 Cases”) hereby move the Court (this “Motion”) for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”, and together with the Interim Order, the “Proposed Orders”), substantially in the forms attached hereto as **Exhibits A** and **B**, respectively, pursuant to sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) (i) prohibiting utility companies from discontinuing, altering or refusing service to the Debtors on account of prepetition invoices, (ii) deeming the utility companies to have received adequate assurance of future payment, (iii) establishing procedures for resolving requests for additional

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

assurance of payment, and (iv) granting related relief. In addition, the Debtors request that the Court schedule a final hearing (the “Final Hearing”) within approximately twenty-five days of the Petition Date (as defined below) to consider approval of this Motion on a final basis. In support of this Motion, the Debtors rely on the *Declaration of Spencer M. Ware in Support of Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”), which was filed contemporaneously with this Motion and is incorporated by reference herein. In further support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over these Chapter 11 Cases and this Motion 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and pursuant to Local Rule 9013-1(f), the Debtors consent to 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. Venue of these Chapter 11 Cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

### **BACKGROUND**

#### **A. General**

3. On January 14, 2022 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, no trustee, examiner or statutory committee

has been appointed in these Chapter 11 Cases. Additional factual background relating to the Debtors' business, capital structure and the commencement of these Chapter 11 Cases is set forth in detail in the First Day Declaration.

4. The Debtors are a leading beauty brand specializing in clean, vegan, and cruelty-free cosmetics and other beauty products. The Debtors sell their products on their e-commerce platform directly to consumers and wholesale to various major retailers. On or about September 29, 2021, the Debtors engaged an investment banker to conduct an exhaustive search to identify a going concern buyer. In parallel, the Debtors commenced various operational cost-savings initiatives to improve liquidity. When it became clear that a going concern sale may not be successful, the Debtors engaged a professional liquidator to commence a liquidation of their physical inventory assets (the "Inventory Sale Process"). In addition, the Debtors engaged a firm to focus on the sale of their intellectual property assets (together with the Inventory Sale Process, the "Sale Process").

5. After a robust and thorough approximately four (4) month marketing and solicitation process, and in consultation with their professional advisors and prepetition lenders, the Debtors ultimately secured a stalking horse agreement with RBI Acquisition Holdings, LLC for the sale of a substantial portion of the Debtors' assets.

6. The Debtors filed these Chapter 11 Cases with the goal of (i) monetizing their assets; (ii) maximizing the value of their assets for the benefit of their creditors and parties in interest; and (iii) minimizing estate obligations, to the extent possible. To that end, the Debtors will proceed with a robust bidding and auction process to maximize the value of the Debtors' assets for the benefit of the Debtors' estates and all stakeholders. Once the Debtors consummate the sale of their assets, the Debtors will close their merchandise distribution center and look to unburden

the estates of the administrative expenses associated therewith and monetize the non-inventory assets located therein. The Debtors anticipate that the Sale Process will be completed in the first quarter of 2022.

**B. The Debtors' Utility Services and Utility Companies**

7. In connection with the operation of their business and management of their properties, the Debtors obtain electricity, natural gas, water and sewage, waste disposal, communication services, and other similar services (collectively, the "Utility Services") from multiple utility companies or brokers (each, a "Utility Company" and collectively, the "Utility Companies"). The Utility Companies provide services to the Debtors' two distributions centers, each of which is located in North Hollywood, California. A nonexclusive list of the Utility Companies and their affiliates that provide Utility Services to the Debtors as of the Petition Date (the "Utility Services List") is attached hereto as **Exhibit C**.<sup>2</sup> The relief requested herein is requested with respect to all Utility Companies providing Utility Services to the Debtors.

8. On average, the Debtors pay approximately \$5,226.85 each month for Utility Services. The Utility Companies do not hold any deposits provided by or for the benefit of the Debtors.

**RELIEF REQUESTED**

9. The Debtors respectfully request that the Court enter the Proposed Orders, (i) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on

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<sup>2</sup> The Debtors have endeavored to identify all of the Utility Companies and list them on the Utility Service List. However, inadvertent omissions may have occurred, and the omission from the Utility Service List of any entity providing utility services to the Debtors shall not be construed as an admission, waiver, acknowledgment, or consent that section 366 of the Bankruptcy Code does not apply to such entity. If the Debtors identify any entity that was inadvertently excluded from the Utility Service List (each, an "Additional Utility Company"), the Debtors will promptly provide such entity with a copy of this Motion and either the (i) Interim Order or (ii) if entered, the Final Order. In addition, the inclusion of any entity on the Utility Service List is not an admission that such entity is a utility with the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect thereto.

account of unpaid prepetition invoices, including the making of demands for security deposits, or accelerated payment terms, (ii) determining that the Debtors have provided each Utility Company with “adequate assurance of payment” within the meaning of section 366 of the Bankruptcy Code (“Adequate Assurance”), based, among other things, on the Debtors’ establishment of a segregated account containing an amount equal to 50% of the Debtors’ estimated monthly cost of the Utility Services, which may be adjusted by the Debtors to account for the termination of certain Utility Services by the Debtors, by agreement between the Debtors and the affected Utility Company, or to account for the addition of a Utility Company to the Utility Service List, (iii) establishing procedures for determining additional Adequate Assurance, if any, and authorizing the Debtors to provide Adequate Assurance to the Utility Companies (the “Adequate Assurance Procedures”), and (iv) setting the Final Hearing on the proposed Adequate Assurance Procedures within approximately twenty-five days of the Petition Date to consider approval of this Motion on a final basis.

### **BASIS FOR RELIEF**

10. The Utility Services are essential to the operation of the Debtors’ business and the success of the ongoing Sale Process at the Debtors’ facilities. As set forth in the First Day Declaration, the Debtors continue their progress towards consummating the Sale Process through the ongoing use of their storage and distribution center and intend to vacate applicable premises upon conclusion of those transactions. The maintenance of current Utility Services is essential to the Debtors’ ability to efficiently administer the Sale Process, which will maximize value for the benefit of all interested parties. Unanticipated delays in the Debtors’ ability to meet their customers’ needs would result in substantial and irreparable harm to the Debtors and would impair the Debtors’ efforts to preserve and maximize the value of their estates during these Chapter 11 Cases. It is, therefore, critical that the Utility Services continue uninterrupted so as to allow the

Sale Process to run its course and generate maximum value for the estates. Similarly, the maintenance of Utility Services provided to the Debtors' facilities is critical to preserving value for the Debtors' go-forward business.

11. Section 366 of the Bankruptcy Code provides that, in a chapter 11 case, during the initial thirty (30) days after the commencement of the case, utilities may not alter, refuse or discontinue service to, or discriminate against, a debtor solely on the basis of the commencement of its case or the existence of prepetition debts owed by the debtor. After the thirty-day period, however, under section 366(c) of the Bankruptcy Code, utilities may discontinue service to a debtor if the debtor does not provide "adequate assurance of future performance" of its postpetition obligations in a form that is satisfactory to the utility, subject to the Court's ability to modify the amount of adequate assurance. *See* 11 U.S.C. § 366(c)(2).

12. The Debtors intend to pay, when due, all undisputed postpetition charges for Utility Services, and the Debtors expect that their available cash will be more than sufficient to pay for the Debtors' postpetition use of Utility Services. Nonetheless, the Debtors propose to deposit a sum of \$2,613.43, which is equal to 50% of the Debtors' estimated monthly cost of the Utility Services, into a segregated bank account within twenty (20) days of the Petition Date (the "Utility Deposit") as Adequate Assurance.

13. To the extent that the Debtors identify Additional Utility Companies or discontinue services from existing Utility Companies, the Debtors seek authority to add or remove parties from the Utility Services List. For any Additional Utility Company, the Debtors will serve such Additional Utility Company with a copy of the appropriate Court order regarding Utility Services, including the Adequate Assurance Procedures, and will increase the Utility Deposit by an amount equal to 50% of the Debtors' estimated monthly cost of services from the Additional

Utility Company. For any Utility Company that is subsequently removed from the Utility Services List, the Debtors will decrease the Utility Deposit by an amount equal to 50% of the Debtors' estimated monthly cost of services from the removed Utility Company upon obtaining the Utility Company's consent or upon providing notice to the Utility Company of its intent to reduce the Utility Deposit twenty-one days thereafter. The Debtors request that the terms of any order entered on this Motion and the Adequate Assurance Procedures apply to any Additional Utility Company.

14. While the form of Adequate Assurance may be limited to the types of security enumerated in section 366(c)(1)(A) of the Bankruptcy Code, the determination of the amount of Adequate Assurance is within the discretion of the Court. It is well established that the requirement that a utility receive adequate assurance of payment does not require guarantee of payment. Instead, the protection granted to a utility is intended to avoid exposing the utility to an unreasonable risk of nonpayment.

15. The Debtors submit that the Utility Deposit constitutes sufficient Adequate Assurance for the Utility Companies. However, should any Utility Company disagree, the Debtors propose to establish the Adequate Assurance Procedures under which a Utility Company may request additional Adequate Assurance. If any Utility Company believes additional Adequate Assurance is required, it may request such additional assurance pursuant to the procedures set forth herein. The proposed Adequate Assurance Procedures are as follows:

- i. Any Utility Company that objects to the Adequate Assurance must serve a request (an "Adequate Assurance Request") on (i) the Debtors, 8161 Lankershim Blvd., North Hollywood, CA 91605, Attn: Spencer M. Ware (spencer.ware@riveron.com); (ii) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Allison S. Mielke, Esq (amielke@ycst.com) and S. Alexander Faris, Esq. (afaris@ycst.com); (iii) counsel to Fifth Third Bank, N.A., Stoll Keenon Ogden PLLC, 500 West Jefferson Street, Suite 2000, Louisville, Kentucky, 40202, Attn: Lea Pauley Goff, Esq. (lea.goff@skofirm.com) and Jamie Brodsky, Esq.

(jamie.brodsky@skofirm.com); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases (collectively, the “Notice Parties”).

- ii. Any 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 relevant account number(s); and (c) explain why the Utility Company believes the Adequate Assurance is not sufficient adequate assurance of future payment.
- iii. Upon the Debtors’ receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.
- iv. The Debtors are authorized to resolve, in their sole discretion, any Adequate Assurance Request by mutual agreement with a Utility Company and without further order of the Court and, in connection with any such agreement, in their sole discretion, 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 the Debtors believe such alternative assurance is reasonable.
- v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the “Determination Hearing”). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.
- vi. Upon the closure of any of the Debtors’ locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) 50% of the estimated monthly cost for such Utility Services and (ii) the amount of the Utility Deposit then attributable to the applicable Utility Company; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Utility Deposit.

16. The Debtors request that the Final Hearing be held within twenty-five days of the Petition Date to ensure that, if a Utility Company argues it can unilaterally refuse service to



the Debtors on the thirty-first day after the Petition Date, the Debtors will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Adequate Assurance Procedures in time to avoid any potential termination of the Utility Services.

17. The Debtors' proposed method of furnishing Adequate Assurance is not prejudicial to the rights of any Utility Company and is in the best interest of the Debtors' estates. Because uninterrupted Utility Services are vital to the success of the Sale Process and otherwise preserving value during these Chapter 11 Cases, the Debtors submit that relief requested herein is necessary and in the best interest of the Debtors' estates and creditors. Such relief ensures that the Debtors' business operations will not be disrupted during these Chapter 11 Cases and also provides both Utility Companies and the Debtors with a fair, orderly procedure for determining Adequate Assurance.

18. Accordingly, for all of the foregoing reasons, the Debtors submit that cause exists for granting the relief requested herein.

#### **IMMEDIATE RELIEF IS JUSTIFIED**

19. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. The Debtors submit that for the reasons already set forth herein, any disruption of the Utility Services would substantially diminish or impair the Debtors' efforts in these Chapter 11 Cases to preserve and maximize the value of their estates, including in connection with the Sale Process and the ongoing efforts to sell the Debtors' assets.

#### **WAIVER OF ANY APPLICABLE STAY**

20. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order,

unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief requested is necessary for the Debtors to operate their business and conduct the Sale Process without interruption, thereby preserving value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

### **RESERVATION OF RIGHTS**

21. Nothing in the Proposed Orders, or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any Utility Company, or (iv) shall be construed as a promise to pay a claim.

### **NOTICE**

22. Notice of this Motion has been given to (i) the U.S. Trustee; (ii) counsel to Fifth Third Bank, N.A.; (iii) the Utility Providers; (iv) holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (v) the Office of the United States Attorney General for the District of Delaware; (vi) the Internal Revenue Service; (vii) the Securities Exchange Commission; (viii) the Banks; and (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013 1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request entry of the Proposed Orders  
(i) granting the relief requested herein, and (ii) granting such other relief as is just and proper.

Dated: January 15, 2022  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ S. Alexander Faris

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*Proposed Counsel to the Debtors and Debtors in  
Possession*

**EXHIBIT A**

**Proposed Interim Order**

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-10050 (\_\_\_\_)

(Jointly Administered)

Docket Ref. No. \_\_\_\_

**INTERIM ORDER (I) PROHIBITING UTILITY COMPANIES FROM  
DISCONTINUING, ALTERING, OR REFUSING SERVICE,  
(II) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE  
ASSURANCE OF FUTURE PAYMENT, (III) ESTABLISHING PROCEDURES  
FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE,  
AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the Motion (the “Motion”)<sup>2</sup> of the Debtors for entry of interim and final orders, pursuant to sections 105(a) and 366 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004, (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 that the Debtors have provided each Utility Company with Adequate Assurance and (iii) establishing the Adequate Assurance Procedures; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

III of the United States Constitution; and it appearing that venue of these Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. Objections to entry of an order granting the Motion on a final basis must be filed by \_\_\_\_\_, 2022 at 4:00 p.m. (ET) and served on: (i) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. (mbcleary@ycst.com) and Allison S. Mielke, Esq. (amielke@ycst.com); (ii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov); (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100 Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300 Wilmington, DE 19801; and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases. A final hearing, if required, on the Motion will be held on \_\_\_\_\_, 2022 at \_\_\_\_\_ .m. (ET). If no objections are filed to the Motion, this Court may enter a final order without further notice or hearing.

3. The Debtors shall serve a copy of the Motion and this Interim Order on each Utility Company listed on the Utility Services List no later than two business days after the date this Interim Order is entered.

4. No later than twenty days after the date the Petition Date, the Debtors shall cause the Utility Deposit to be deposited into a segregated account and held during the pendency of these Chapter 11 Cases, subject to the procedures approved hereby.

5. Until such time as this Court enters a final order on the Motion or as otherwise ordered by this Court, all Utility Companies 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 Adequate Assurance.

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

i. Any Utility Company that objects to the Adequate Assurance must serve an Adequate Assurance Request on the (i) the Debtors, 8161 Lankershim Blvd., North Hollywood, CA 91605, Attn: Spencer Ware (spencer.ware@riveron.com); (ii) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Allison S. Mielke, Esq. (amielke@ycst.com) and S. Alexander Faris, Esq. (afaris@ycst.com); (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100 Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300 Wilmington, DE 19801; and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases (collectively, the "Notice Parties").

ii. Any 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. Upon the Debtors' receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.

iv. The Debtors are authorized to resolve, in their sole discretion, any Adequate Assurance Request by mutual agreement with a Utility Company and without further order of this Court and, in connection with any such agreement, in their sole discretion, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of this Court, if the Debtors believe such alternative assurance is reasonable.

v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the "Determination Hearing"). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.

vi. Upon the closure of any of the Debtors' locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services and (ii) the amount of the Utility Deposit then attributable to the applicable Utility Company; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Utility Deposit.

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

8. All Utility Companies that do not serve an Adequate Assurance Request shall be prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Adequate Assurance.



9. The Debtors are authorized, in their sole discretion, to add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the Utility Deposit an amount equal to 50% of the Debtors' estimated monthly cost for each subsequently-added or removed Utility Company as soon as practicable. For Utility Companies that are added to the Utility Services List, the Debtors will serve a copy of this Interim Order, including the Adequate Assurance Procedures, on such subsequently-added Utility Company and augment the Utility Deposit with an amount equal to 50% of the Debtors' estimated monthly cost for such added Utility Company within 20 days of its addition. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures, provided that any subsequently-added Utility Company must serve, on the Notice Parties, any Adequate Assurance Request. The Debtors 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 their intent to reduce the Utility Deposit and receiving no response thereto.

10. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors listed on the Utility Services List, provided however, that this Interim 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 Interim Order, nor the Debtors' service of the Motion upon the Utility Services List, shall constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors' rights and defenses with respect thereto are fully reserved.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Interim Order, or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' 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. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

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

**EXHIBIT B**

**Proposed Final Order**

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

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 22-10050 (\_\_\_\_)

(Jointly Administered)

Docket Ref. Nos. \_\_\_\_ & \_\_\_\_

**FINAL ORDER (I) PROHIBITING UTILITY COMPANIES FROM  
DISCONTINUING, ALTERING, OR REFUSING SERVICE,  
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FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE,  
AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of interim and final orders, pursuant to sections 105(a) and 366 of the Bankruptcy Code, Bankruptcy Rule 6004, (i) prohibiting the Utility Companies from altering, refusing, or discontinuing Utility Services on account of prepetition invoices, including the making of demands for security deposits or accelerated payment terms, (ii) determining that the Debtors have provided each of the Utility Companies with Adequate Assurance and (iii) establishing the Adequate Assurance Procedures; and upon consideration of the First Day Declaration; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b); and this

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Chapter 11 Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors 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. To the extent not already done, Debtors are authorized to cause the Utility Deposit to be held in a segregated account during the pendency of these Chapter 11 Cases, subject to the Adequate Assurance Procedures.
4. The Utility Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
5. All Utility Companies 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 Adequate Assurance.
6. The following Adequate Assurance Procedures are hereby approved:
  - i. Any Utility Company that objects to the Adequate Assurance must serve an Adequate Assurance Request on the (i) the Debtors, 8161 Lankershim

Bldv., North Hollywood, CA 91605, Attn: Spencer Ware (spencer.ware@riveron.com); (ii) proposed counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Allison S. Mielke, Esq. (amielke@ycst.com) and S. Alexander Faris, Esq. (afaris@ycst.com); (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100 Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300 Wilmington, DE 19801; and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases (collectively, the "Notice Parties").

ii. Any 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. Upon the Debtors' receipt of any Adequate Assurance Request, the Debtors shall promptly negotiate with the requesting Utility Company to resolve its Adequate Assurance Request.

iv. The Debtors are authorized to resolve, in their sole discretion, any Adequate Assurance Request by mutual agreement with a Utility Company and without further order of this Court and, in connection with any such agreement, in their sole discretion, provide a Utility Company with alternative adequate assurance of payment, including cash deposits, prepayments, or other forms of security, without further order of this Court, if the Debtors believe such alternative assurance is reasonable.

v. If the Debtors determine that a timely received Adequate Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company, the Debtors shall request a hearing before the Court to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (the "Determination Hearing"). Pending resolution of such Adequate Assurance Request at the Determination Hearing, the Utility Company shall be prohibited from altering, refusing, or discontinuing services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Adequate Assurance.

vi. Upon the closure of any of the Debtors' locations and the discontinuance of the Utility Services associated therewith, or the termination of Utility Services independent thereof, the Debtors may, in their discretion and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the

estimated two-week utility expense for such Utility Services and (ii) the amount of the Utility Deposit then attributable to the applicable Utility Company; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtors shall have paid such Utility Company in full for any outstanding post-petition Utility Services before reducing the Utility Deposit.

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

8. All Utility Companies that do not serve an Adequate Assurance Request shall be: (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Company in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Adequate Assurance.

9. The Debtors are authorized, in their sole discretion, to add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the Utility Deposit an amount equal to 50% of the Debtors’ estimated monthly cost of utility service for each subsequently-added or removed Utility Company as soon as practicable. For Utility Companies that are added to the Utility Services List, the Debtors will serve a copy of this Final Order, including the Adequate Assurance Procedures, on such subsequently-added Utility Company, and augment the Utility Deposit with an amount equal to 50% of the Debtors’ estimated monthly cost for such added Utility Company within 20 days of its addition. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures, provided that any subsequently-added Utility Company must serve, on the Notice Parties, any Adequate Assurance Request. The Debtors 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 their intent to reduce the Utility Deposit and receiving no response thereto.

10. The relief granted herein shall apply to all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

11. Nothing contained in the Motion, the Interim Order, or this Final Order, nor the Debtors' service of the Motion upon the Utility Services List, shall constitute an admission or concession that each such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors' rights and defenses with respect thereto are fully reserved.

12. Notwithstanding the relief granted herein 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 the Debtors, a waiver of the Debtors' 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 Final Order shall be effective immediately and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Final Order; and (iii) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Final Order.

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



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.

**EXHIBIT C****Utility Services List**

Utility Provider Name	Account Number	Type of Service Provided
Republic Service	3-0902-0138799, 3-0902-0156272	Waste Disposal
Los Angeles Department of Water and Power	45905247668 8163,0259562816,	Electric and Water
Spectrum Business	8448300520482380, 8448200188441546	Waste Disposal
Verizon Wireless	7423148889-00001	Telecommunications
Southern California Gas Company	6912069181	Gas