

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

In re

PACIFIC SUNWEAR OF CALIFORNIA,
INC., a California corporation, *et al.*,¹

Debtors.

Chapter 11

Case No.: 16-10882 (LSS)

(Jointly Administered)

Re Docket No. 12

**INTERIM ORDER (I) APPROVING THE DEBTORS'
PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR
FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY COMPANIES FROM
ALTERING, REFUSING, OR DISCONTINUING SERVICES, (II) APPROVING
THE DEBTORS' PROPOSED PROCEDURES FOR RESOLVING ADEQUATE
ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the "Motion") of Pacific Sunwear of California, Inc. ("PacSun"), Miraloma Borrower Corporation ("Miraloma"), and Pacific Sunwear Stores Corp. ("PacSun Stores"), the debtors and debtors in possession (the "Debtors") in the above-captioned jointly administered chapter 11 cases (the "Cases"), for entry of an interim order (this "Interim Order"), 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 for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) approving the Debtors' Proposed Adequate Assurance of payment for future utility services, (ii) prohibiting Utility Companies from altering, refusing, or discontinuing services, (iii) approving the Debtors' proposed procedures for resolving Adequate Assurance Requests, and (iv) granting related relief; and upon consideration of the Schoenfeld Declaration and the Tedford Declaration and the entire

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Pacific Sunwear of California, Inc. (9463-CA); Miraloma Borrower Corporation (0381-Del.); and Pacific Sunwear Stores Corp. (5792-CA). The Debtors' address is 3450 East Miraloma Avenue, Anaheim, CA 92806.

record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 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)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these 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, ADJUDGED, AND DECREED 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 May 3, 2016, at 3:00 p.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 April 25, 2016, and shall be served on: (i) the Debtors, 3450 East Miraloma Avenue, Anaheim, CA 92806, Attn: Craig E. Gosselin, Esq.; (ii) proposed counsel for the Debtors, (a) Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, Thirty-Ninth Floor, Los Angeles, CA 90067, Attn: Michael L. Tuchin, Esq. and Jonathan M. Weiss, Esq., and (b) Young Conaway Stargatt & Taylor, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq.; (iii) counsel to any statutory committee appointed in these cases; (iv) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building,

844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Juliet M. Sarkessian, Esq.; (v) counsel to the Term Loan Lenders, (a) Kirkland & Ellis LLP, 555 California Street, San Francisco, CA 94104, Attn: Melissa N. Koss, Esq. and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY, Attn: Joshua A. Sussberg and (b) Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, DE 19801, Attn: Domenic E. Pacitti; and (vi) counsel to the ABL Agent and DIP Agent, Choate Hall & Stewart LLP, Two International Place, Boston, MA 02110, Attn: John Ventola, Esq. and Sean Monahan, Esq.. If no objections to entry of a final order on the Motion are timely received, this Court may enter such 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. The Debtors are authorized to pay on a timely basis and in accordance with their prepetition practices all undisputed invoices for postpetition Utility Services provided by the Utility Companies to the Debtors.

5. No later than twenty business days after the date this Interim Order is entered, the Debtors shall cause the Adequate Assurance Deposit in the aggregate amount of \$441,372, to be deposited into a segregated account and held during the pendency of these Cases. Attached hereto as **Exhibit A** is a schedule of the Utility Companies. The amount of the Adequate Assurance Deposit attributable to any Utility Company is on the exhibit attached hereto **Exhibit A**.

6. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code, subject to the Adequate Assurance Procedures set forth below.

7. Until such time as the Court enters a final order on the Motion or otherwise orders, 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 Proposed Adequate Assurance.

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

- b. Any Utility Company that objects to the Debtors' Proposed Adequate Assurance must serve a request (an "Adequate Assurance Request") on (i) the Debtors, 3450 East Miraloma Avenue, Anaheim, CA 92806, Attn: Craig E. Gosselin, Esq.; (ii) proposed counsel for the Debtors, (a) Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, Thirty-Ninth Floor, Los Angeles, CA 90067, Attn: Michael L. Tuchin, Esq. and Jonathan M. Weiss, Esq., and (b) Young Conaway Stargatt & Taylor, Rodney Square, 1000 North King Street, Wilmington, DE 19801, Attn: Michael R. Nestor, Esq.; (iii) counsel to any statutory committee appointed in these cases; (iv) counsel to the Term Loan Lenders, Kirkland & Ellis LLP, 555 California Street, San Francisco, CA 94104, Attn: Melissa N. Koss, Esq.; and (v) counsel to the ABL Agent and DIP Agent, Choate Hall & Steward LLP, Two International Place, Boston, MA 02110, Attn: John Ventola, Esq. and Sean Monahan, Esq. (collectively, the "Notice Parties").
- c. Any Adequate Assurance Request must be served on the Notice Parties and must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits or letters of credit; and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- d. The Debtors are authorized to resolve, in their discretion in consultation with the Term Loan Lenders and the DIP Agent, 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, subject to the terms of any postpetition debtor in possession financing. Without the need for any notice to, or action, order, or approval of, the Court, the Debtors may reduce the amount of the Adequate

Assurance Deposit by any amount allocated to a particular Utility Company to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtors and the affected Utility Company.

- e. If the Debtors are unable to consensually resolve an Adequate Assurance Request by mutual agreement within 14 days of receipt of the Adequate Assurance Request, the Debtors will seek a hearing with the Court (the “Determination Hearing”) to determine the appropriate amount of adequate assurance required with respect to such Adequate Assurance Request. 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 Proposed Adequate Assurance.

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

10. All Utility Companies who do not file an objection in accordance with paragraph a(1)(i)a)1)2 of this Interim Order or 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) forbidden 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 Proposed Adequate Assurance.

11. The Debtors are authorized, in their discretion in consultation with the Term Loan Lenders and the DIP Agent, to add or remove any Utility Company from the Utility Services List. With respect to any added Utility Company, the Debtors shall add to the Adequate Assurance Deposit an amount equal to 2 weeks of the Debtors’ average monthly utility consumption for such Utility Company over the course of the prior 12 months. With respect to any Utility Company that is removed from the Utility Service List, the Debtors shall not deduct from the Adequate Assurance Deposit the amount set aside for such Utility Company unless the Debtors shall have paid such Utility Company in full for any outstanding amounts owed for post-

petition Utility Services, in an amount agreed to by the Utility Company, or, if an agreement cannot be reached, in an amount ordered by the Court. 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, together with notice of the amount being deposited into the Adequate Assurance Deposit on behalf of such Utility Company. 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, if such Utility Company objects to the Debtors' proposed Adequate Assurance.

12. The relief granted herein is for all Utility Companies providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List, *provided, however*, that this Interim Order shall be binding on any Utility Companies listed on any amended Utility Service List filed with the Court as of the date of service of the notice of the amended Utility Service List on such Utility Company.

13. Nothing contained in the Motion or 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 reserve all rights and defenses with respect thereto.

14. Nothing in this Interim Order, nor as a result of any payment or deposit made pursuant to this Interim Order, (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, or (iii) shall be construed as a promise to pay a claim.


15. Notwithstanding anything to the contrary contained herein, any payment made or to be made under this Order, any authorization contained in this Order, or any claim for which payment is authorized hereunder, shall be subject to the requirements imposed on the Debtors under any orders of this Court approving any debtor in possession financing for, or any use of cash collateral by, the Debtors (such order, the "DIP Order") and any budget in connection therewith.

16. 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.

17. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this 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 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 Order.

18. The Court retains jurisdiction and power with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: April 8, 2016
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE