

ORIGINAL

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

In re:

BLITZ U.S.A., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 11-13063 (PJW)
)
) (Joint Administration Requested)
)
) Re: Docket No. 3

**ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF KURTZMAN CARSON CONSULTANTS
LLC AS NOTICE AND CLAIMS AGENT FOR THE DEBTORS AND
DEBTORS IN POSSESSION NUNC PRO TUNC TO THE PETITION DATE**

Upon the Motion (the “*Motion*”)² of Blitz U.S.A., Inc. (“*Blitz*”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “*Debtors*”), for entry of an order (this “*Order*”) authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC (“*KCC*”) as notice and claims agent in these chapter 11 cases; and upon the *Declaration of Rocky Flick, President and Chief Executive Officer of Blitz U.S.A., Inc. in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “*First Day Declaration*”); and upon the Declaration of Albert H. Kass, Vice President of Corporate Restructuring Services (the “*Kass Declaration*”), in support of the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and the Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested is in the best interests of the Debtors’ estates, their creditors, and other

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: LAM 2011 Holdings, LLC (8742); Blitz Acquisition Holdings, Inc. (8825); Blitz Acquisition, LLC (8979); Blitz RE Holdings, LLC (9071); Blitz U.S.A., Inc. (8104); and F3 Brands LLC (2604). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 404 26th Ave. NW Miami, OK 74354.

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



parties in interest; and notice of the Motion appearing adequate and appropriate under the circumstances; and this Court having found that no other or further notice need be provided; and this Court having reviewed the Motion and having heard statements in support of the relief requested therein at a hearing held before this Court (the “*Hearing*”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to retain and employ KCC as their notice and claims agent in accordance with the Motion and subject to the terms of the Services Agreement *nunc pro tunc* to the Petition Date.
3. Subject to the terms of this Order, the terms of the Services Agreement are approved.
4. KCC is authorized to perform the services set forth in the Motion, this Order and the Services Agreement.
5. Without further order of this Court, the Debtors are authorized to pay KCC fees and expenses as set forth in the Services Agreement in the ordinary course of business and without the necessity of KCC filing fee applications with this Court; *provided, however*, that KCC shall provide copies of its invoices to the Office of the United States Trustee and any official committee of creditors appointed in these chapter 11 cases; *provided, further*, that this Court retains jurisdiction to resolve any disputes regarding, *inter alia*, the reasonableness of KCC’s compensation and reimbursement requests.

6. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC incurred pursuant to the Services Agreement shall be an administrative expense of the Debtors' estates.

7. KCC may hold its retainer under the Services Agreement during the chapter 11 cases as security for the payment of expenses only (and not fees) under the Services Agreement.

8. KCC is appointed as agent for the office of the Clerk of this Court (the "*Clerk's Office*") and, as such, is designated as the authorized repository for all proofs of claim and proofs of interest filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk's Office with a certified duplicate thereof as the Clerk's Office may direct.

9. The indemnification provisions in Article IX of the Services Agreement are approved, subject to the following clarifications:

- a. KCC shall not be entitled to indemnification, contribution, or reimbursement for services other than the services to be provided under the Services Agreement, the Motion, and this Order, unless such additional services and the indemnification, contribution, or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from KCC gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtors allege breach of KCC contractual obligations under the Services Agreement unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Motion and Order; and

- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application before this Court, and the Debtors may not pay any such amounts before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment related to indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC.

10. Notwithstanding anything to the contrary in the Services Agreement, (a) there shall be no limitation of liability in favor of KCC and (b) this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

11. If these cases convert to cases under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services until the claims filed in the chapter 11 cases have been completely processed; if claims agent representation is necessary in the converted chapter 7 cases, KCC will continue to be paid in accordance with section 156(c) of title 28 of the United States Code under the terms set out in the Services Agreement and this Order; provided, however, that nothing herein obligates a successor chapter 7 trustee or chapter 11 trustee to employ KCC.

12. KCC shall not cease providing claims processing services during the chapter 11 cases for any reason without prior order of this Court authorizing KCC to do so; provided, however, that KCC may seek such an order on expedited notice by filing a request with the Court with notice of such request to be served on the Debtors, the Office of the United States Trustee and any official committee of creditors appointed in these cases by facsimile or overnight

delivery; provided further, that except as expressly provided herein, the Debtors and KCC may otherwise terminate or suspend other services as provided under the Services Agreement.

13. The relief requested herein shall continue to apply to any of the Debtors' affiliates and their respective estates that subsequently commence chapter 11 cases without the need for any further requests or motions.

14. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

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

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

Dated: Nov. 10 2011
Wilmington, Delaware



THE HONORABLE PETER J. WALSH
UNITED STATES BANKRUPTCY JUDGE