

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

----- X
 :
In re : **Chapter 11**
 :
PACIFICCO INC., et al., : **Case No. 23-10470 (PB)**
 :
Debtors.¹ : **(Jointly Administered)**
 : **Re: ECF No. 5**
 ----- X

**ORDER APPOINTING KURTZMAN CARSON
 CONSULTANTS LLC AS CLAIMS AND NOTICING
 AGENT FOR DEBTORS AND GRANTING RELATED RELIEF**

Upon the application (the “**Application**”)² of PacificCo Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), for an order authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“**KCC**”) as claims and noticing agent under 28 U.S.C. §156(c), Section 105(a) of the Bankruptcy Code, and S.D.N.Y. LBR 5075-1 to, among other things, (i) distribute required notices to parties in interest, (ii) receive, maintain, docket, and otherwise administer the proofs of claim filed in the Debtors’ chapter 11 cases, and (iii) provide such other administrative services – as required by the Debtors – that would fall within the purview of services to be provided by the Clerk’s Office, and upon the Jordan Declaration submitted in support of the Application; and the Debtors having estimated that there are in excess of 4,700 creditors in these chapter 11 cases, many of which are expected to file proofs of claim, and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. §156(c) to utilize, at the Debtors’

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Catalina Marketing Corporation (9007); PacificCo Inc. (1563); PacificCo Intermediate Corp. (8394); PacificCo Acquisition Corp. (4852); Catalina Marketing Procurement, LLC (9333); Catalina Marketing Technology Solutions, Inc. (8728); Modiv Media, LLC (3507); Cellfire LLC (5599); Catalina Marketing Worldwide, LLC (9687); Catalina-Pacific Media, L.L.C. (3931); CMJ Investments L.L.C. (0561); Supermarkets Online, Inc. (6998); Supermarkets Online Holdings, Inc. (1736); Catalina Marketing Loyalty Holdings, Inc. (3746); and Catalina Digital Holdings, LLC (3488). The Debtors’ principal offices are located at 200 Carillon Parkway, Suite 200, St. Petersburg, FL 33716.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



expense, outside agents and facilities to provide notices to parties in chapter 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that KCC has the capability and experience to provide such services and that KCC does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of a claims and noticing agent is in the best interests of the Debtors, the estates and creditors; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application as **Exhibit C**, the Application is approved solely as set forth in this Order.

2. The Debtors are authorized to retain KCC under the terms of the Engagement Agreement, and KCC is authorized and directed to perform the Claims and Noticing Services, including, for the avoidance of doubt, to provide noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application.

3. KCC shall serve as the interim custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official Claims Registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk who remains the official custodian of court records under 28 U.S.C. § 156(e).

4. KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. KCC is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate KCC in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee, if any, monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify KCC under the terms of the Engagement

Agreement.

12. All requests by KCC for the payment of indemnification as set forth in the Engagement Agreement shall be made by means of an application to the Court and shall be subject to review by the Court to ensure that payment of such indemnity conforms to the terms of the Engagement Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought, *provided however*, that in no event shall KCC be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty (if any), gross negligence or willful misconduct.

13. In the event KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Court after notice and a hearing.

14. Notwithstanding anything in this Order, the Application, or the Engagement Agreement to the contrary, the provisions related to limitation of liability in section IX of the Engagement Agreement are deemed to be of no force or effect with respect to the services provided pursuant to this Order.

15. In the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' attorney.

16. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by KCC but is not specifically authorized by this Order.

17. KCC will serve as the conduit by which communications to individual creditors are transmitted, including those with redacted information.

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

19. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

20. KCC shall not cease providing claims processing services during the chapter 11 case(s) for any reason, including nonpayment, without an order of the Court.

21. At the end of a case or upon termination of KCC's services, the Debtors must obtain a termination order to terminate the services of KCC. KCC is responsible for archiving the claims with the Federal Archives Record Administration, if applicable.

22. In the event of any inconsistency between the Engagement Agreement, the Application and the Order, the Order shall govern.

Dated: March 31, 2023
New York, New York

/s/ Lisa G. Beckerman
THE HONORABLE LISA G. BECKERMAN
UNITED STATES BANKRUPTCY JUDGE