

KLESTADT WINTERS JURELLER
SOUTHARD & STEVENS, LLP
Tracy L. Klestadt
Joseph C. Corneau
200 West 41st Street, 17th Floor
New York, New York 10036
Telephone: (212) 972-3000
Facsimile: (212) 972-2245

*Proposed Counsel for the Debtors
and Debtors in Possession*

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

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	:
In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
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**DEBTORS' APPLICATION FOR AN ORDER AUTHORIZING
APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC
AS CLAIMS AND NOTICING AGENT**

TGHI, Inc. ("**Holdings**") and Parent TGI, Inc. ("**Parent**"), as chapter 11 debtors and debtors in possession (each a "**Debtor**" and collectively the "**Debtors**") in the above-referenced chapter 11 cases (the "**Chapter 11 Cases**"), hereby submit this application (the "**Application**") for entry of an order (the "**Retention Order**"), substantially in the form annexed hereto as **Exhibit A**, appointing Kurtzman Carson Consultants LLC ("**KCC**") as claims and noticing agent (the "**Claims and Noticing Agent**") in the Debtors' Chapter 11 Cases. In support of this Application, the Debtors rely upon the Declaration of Christopher Layden

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814).



Pursuant to Local Bankruptcy Rule 1007-2 and in Support of Chapter 11 Petitions and First Day Motions (the “**First Day Declaration**”), and respectfully represents as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).
2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are 28 U.S.C. § 156(c) and Local Rule 5075-1.

GENERAL BACKGROUND

4. On the date hereof (the “**Petition Date**”), each of the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “**Bankruptcy Code**”). The Debtors continue to manage and operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

5. The Debtors respectfully refer the Court and interested parties to the First Day Declaration for a detailed description of the Debtors’ businesses and events leading to the commencement of the Chapter 11 Cases.

RELIEF REQUESTED

6. This Application is made pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code and rule 5075-1 of the Southern District of New York Local Bankruptcy Rules (the “**Local Rules**”) for an order appointing KCC to act as the Claims and Noticing Agent to assume full responsibility for the distribution of notices and the maintenance, and the processing and docketing of proofs of claim filed in the Debtors’ Chapter 11 Cases. The

Debtors' selection of KCC to act as the Claims and Noticing Agent is in compliance with the Court's *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)* (the "**SDNY Claims Agent Protocol**"), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise. The terms of the retention are set forth in the Retention Agreement annexed hereto as **Exhibit B** (the "**Retention Agreement**"). KCC is seeking approval solely of the terms and provisions as set forth in this Application and the proposed order attached hereto.²

7. The Claims Agent has acted as the claims and noticing agent in numerous cases of comparable size, including several cases currently pending in the United States Bankruptcy Court for this District. See e.g., In re Eagle Bulk Shipping, Inc., No. 14-12303 (SHL) (Bankr. S.D.N.Y. Aug. 7, 2014) [Docket No. 30]; In re ConnectEdu, Inc., No. 14-11238 (SCC) (Bankr. S.D.N.Y. May 1, 2014) [Docket No. 26]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Apr. 15, 2014) [Docket No. 36]; In re Metro Affiliates, Inc., No. 13-13591 (SHL) (Bankr. S.D.N.Y. Nov. 7, 2013) [Docket No. 43]; In re Flat Out Crazy, LLC, No. 13-22094 (RDD) (Bankr. S.D.N.Y. Jan. 29, 2013) [Docket No. 40]; In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. May 16, 2012) [Docket No. 96]; In re LightSquared Inc., No. 12-12080 (SCC) (Bankr. S.D.N.Y. May 15, 2012) [Docket No. 34]; In re Grubb & Ellis, No. 12-10685 (MG) (Bankr. S.D.N.Y. Feb. 23, 2012) [Docket No. 33]; In re

² The Debtors will also seek, by separate application, retention of KCC as administrative agent pursuant to the retention agreement attached thereto.

Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 19, 2012) [Docket No. 47]; In re The Connaught Group, No. 12-10512 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2012) [Docket No. 46]; In re Jobson Med. Info. Holdings, LLC, No. 12-10434 (SHL) (Bankr. S.D.N.Y. Feb. 3, 2012) [Docket No. 28]; In re Hostess Brands, Inc., No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) [Docket No. 201].

8. By appointing KCC as the claims and noticing agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the clerk's office will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

9. This Application pertains only to the work to be performed by the Claims Agent under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 5075-1. Any work to be performed by the Claims and Noticing Agent outside of this scope is not covered by this Application or by any Order granting approval hereof. Specifically, KCC will perform the following tasks in its role as Claims and Noticing Agent (the "**Claims and Noticing Services**"), as well as all quality control relating thereto:

- a. Prepare and serve required notices and documents in the Chapter 11 Cases in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the Chapter 11 Cases and the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement or chapter 11 plan, (vi) notice of the effective date of any chapter 11 plan, and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Cases.
- b. Maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively,

“Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;

- c. Maintain (i) a list of all potential creditors, equity holders and other parties-in-interest; and (ii) a “core” mailing list consisting of all parties described in sections 2002(i), (j) and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- d. Furnish notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by this Court, and notify said potential creditors of the existence, amount and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. For *all* notices, motions, orders or other pleadings or documents served, prepare and file or caused to be filed with the Clerk an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice or pleading served or the docket numbers(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- g. Process all proofs of claim received, including those received by the Clerk’s Office, and check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. Maintain the official claims register for each Debtor (the **“Claims Registers”**) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, (iv) the amount asserted, (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), (vi) the applicable Debtor, and (vii) any disposition of the claim;

- i. Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- j. Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- k. Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of the Claims Agent, not less than weekly;
- l. Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the claims register for the Clerk's review (upon the Clerk's request);
- m. Monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register;
- n. Assist in the dissemination of information to the public and respond to requests for administrative information regarding the case as directed by the Debtors or the Court, including through the use of a case website and/or call center.
- o. If these Chapter 11 Cases are converted to chapter 7, contact the Clerk's Office within three days of the notice to the Claims Agent of entry of the order converting the case;
- p. 30 days prior to the close of these cases, to the extent practicable, request that the Debtors submit to the Court a proposed Order dismissing the Claims Agent and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- q. Within seven days of notice to the Claims Agent of entry of an order closing the Chapter 11 Cases, provide to the Court the final version of the claims register as of the date immediately before the close of the Chapter 11 Cases;
- r. At the close of these cases, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Archives Record Administration, located at Central Plains Region, 200 Space Center Drive, Lee's Summit, MO 64064 or (ii) any other location requested by the Clerk's Office; and
- s. Provide such other related claims and noticing services as the Debtors may require in connection with the Chapter 11 Cases.

10. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by the Claims and Noticing Agent.

11. The Claims and Noticing Agent shall not employ any past or present employee of the Debtors for work that involves the Debtors' bankruptcy cases.

12. The Debtors respectfully request that the undisputed fees and expenses incurred by the Claims and Noticing Agent in the performance of the above services be treated as administrative expenses of the Debtors' Chapter 11 estates pursuant to 28 U.S.C. § 156(c) and 11 U.S.C. § 503(b)(1)(A) and be paid in the ordinary course of business without further application to, or order of, the Court. The Claims and Noticing Agent agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to 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. If any dispute arises relating to the Retention Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. In connection with its retention as Claims and Noticing Agent, KCC represents in the Declaration of Evan Gershbein (the "**Gershbein Declaration**"), among other things, that:

- a. The Claims and Noticing Agent will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in the Chapter 11 Cases;
- b. By accepting employment in the Chapter 11 Cases, the Claims and Noticing Agent waives any rights to receive compensation from

the United States government in connection with the Debtors' Chapter 11 Cases;

- c. In its capacity as the Claims and Noticing Agent in the Chapter 11 Cases, the Claims and Noticing Agent will not be an agent of the United States and will not act on behalf of the United States; and
- d. The Claims and Noticing Agent is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged.

14. This Application complies with the SDNY Claims Agent Protocol and conforms to the standard Application in use in this Court.

15. The Debtors have provided copies of this Application to (a) the Clerk of the Court; (b) the Office of the U.S. Trustee for the Southern District of New York; (c) counsel to the Prepetition \$20 Million Facility Agent; (d) counsel to the PIK Note Administrative Agent; (e) the Internal Revenue Service; (f) the United States Attorney for the Southern District of New York; and (g) any such other party entitled to notice pursuant to Local Bankruptcy Rule 9013-1(b). The Debtors submit that no other or further notice need be given.

WHEREFORE, the Debtors request entry of the Retention Order authorizing KCC to act as Claims and Noticing Agent for the maintenance and processing of claims and the distribution of notices.

Dated: New York, New York
February 9, 2016

TGHI, INC.

/s/ Christopher Layden
Christopher Layden
President

PARENT THI, INC.

/s/ Christopher Layden
Christopher Layden
President

EXHIBIT A

Proposed Order

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

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	:
In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
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**ORDER AUTHORIZING THE DEBTORS TO APPOINT KURTZMAN
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT**

Upon the Application (the “**Application**”)² of TGHI, Inc. (“**Holdings**”) and Parent THI, Inc. (“**Parent**”), as chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), for an order authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“**KCC**”) as Claims and Noticing Agent (the “**Claims and Noticing Agent**”), under 28 U.S.C. §156(c), Section 105(a) of the Bankruptcy Code, and the Southern District of New York Local Bankruptcy Rule (“**Local Rule**”) 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 that would fall within the purview of services to be provided by the Clerk’s Office, and upon the Declaration of Steven Varner Pursuant to Local Bankruptcy Rule 1007-2 and in Support of the First Day Motions and Applications and the Declaration of Evan Gershbein submitted in support of the Application; and the Debtors having estimated that there are a significant number of 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.

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814).

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

§156(c) to utilize, at the Debtors' expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that the Claims Agent has the capability and experience to provide such services and that the Claims Agent 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 the Claims Agent is in the best interests of the Debtors, the estates and creditors; and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted in all respects.
2. The Debtors are authorized to retain KCC *nunc pro tunc* to the Petition Date under the terms of the Retention Agreement, and the Claims and Noticing Agent is authorized and directed to perform 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 (the "**Claims and Noticing Services**").
3. The Claims and Noticing Agent shall serve as the 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 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.
4. The Claims and Noticing Agent is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.
5. The Claims and Noticing Agent is authorized to take such other action to comply with all duties set forth in the Application.
6. The Debtors are authorized to compensate the Claims and Noticing Agent in accordance with the terms of the Retention Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by the Claims Agent and the rates charged for each,

and to reimburse the Claims and Noticing Agent for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for the Claims and Noticing Agent to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. The Claims and Noticing Agent 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 Retention 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 the Claims and Noticing Agent under this Order shall be an administrative expense of the Debtors' estates.

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

11. The Debtors shall indemnify Claims and Noticing Agent under the terms of the Retention Agreement.

12. All requests by Claims and Noticing Agent for the payment of indemnification as set forth in the Retention 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 Retention 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 Claims and Noticing Agent 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 that Claims and Noticing Agent seeks reimbursement from the Debtor[s] for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Retention Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Claims and Noticing Agent's own applications, both interim and final, but determined by this Court after notice and a hearing.

14. In the event the Claims and Noticing Agent is unable to provide the services set out in this Order, the Claims and Noticing Agent will immediately notify the Clerk and the 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 the Debtors' attorney.

15. 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 the Claims and Noticing Agent but is not authorized by this Order.

16. The Debtors and the Claims and Noticing Agent are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

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

18. The Claims and Noticing Agent shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, unless authorized to do so by an order of the Court.

19. In the event of any inconsistency between the Retention Agreement, the Application and the Order, the Order shall govern.

Dated: _____, 2016
New York, New York

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Retention Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 5th day of November, 2015, between TGHI, Inc. and Parent THI, Inc. (together, the "Holding Companies"),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, "KCC").

In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Holding Companies with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC's standard reports as well as consulting and programming support for the Holding Companies requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Holding Companies (the "KCC Fee Structure").

C. Without limiting the generality of the foregoing, KCC may, upon request by the Holding Companies, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Holding Companies or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Holding Companies when provided by KCC.

E. The Holding Companies acknowledges and agrees that KCC will often take direction from the Holding Companies' representatives, employees, agents and/or professionals (collectively, the "Holding Companies Parties") with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Holding Companies agrees to be bound by, any requests, advice or information provided by the Holding Companies Parties to the same extent as if such requests, advice or information were provided by the Holding Companies. The Holding Companies agrees and understands that KCC shall not provide the Holding Companies or any other party with any legal advice.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Holding Companies agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect as of the date of this Agreement in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment. KCC reserves the right to reasonably increase its prices, charges and rates annually. If any price increases exceed 10%, KCC will give thirty (30) days written notice to the Holding Companies.

B. The Holding Companies agrees to pay the reasonable out of pocket expenses incurred by KCC in connection with services provided under this Agreement, including but not limited to, transportation, lodging, and meals.

C. In addition to all fees for services and expenses hereunder, the Holding Companies shall pay to KCC (i) any fees and expenses related to, arising out of, or as a result of any error or omission made by the Holding Companies or the Holding Companies Parties, as mutually determined by KCC and the Holding Companies, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Holding Companies requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Holding Companies at a competitive rate.

E. KCC agrees to submit its invoices to the Holding Companies monthly and the Holding Companies agrees that the amount invoiced is due and payable upon the Holding Companies' receipt of the invoice. However, where total fees and expenses are expected to exceed \$10,000 in any single month, KCC may require advance payment from the Holding Companies due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Holding Companies further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Holding Companies shall give written notice to KCC within ten (10) days of receipt of the invoice by the Holding Companies. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) as well as certain expenses must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Holding Companies files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) ("Section 156(c)") and that all fees and expenses due under this Agreement shall be paid as administrative expenses of the Holding Companies' chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Holding Companies shall cause a motion to be filed with the Bankruptcy Court seeking entry of an order pursuant to Section 156(c) approving this Agreement in its entirety (the "Section 156(c) Order"). The form and substance of the motion and the Section 156(c) Order shall be reasonably acceptable to KCC. If any Holding Companies chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with Section 156(c) and under the terms of this Agreement.



KCC AGREEMENT FOR SERVICES

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$7,500 (the "Retainer") that may be held by KCC as security for the Holding Companies' payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Holding Companies any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Holding Companies agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Holding Companies further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Holding Companies do not vest in the Holding Companies any rights in such property, it being understood that such property is only being made available for the Holding Companies' use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Holding Companies agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

V. CONFIDENTIALITY

Each of KCC and the Holding Companies, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.



KCC AGREEMENT FOR SERVICES

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Holding Companies' reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Holding Companies to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Holding Companies and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Holding Companies agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Section 156(c) Order, the Holding Companies shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility under Section 156(c) and this Agreement.

C. Any data, programs, storage media or other materials furnished by the Holding Companies to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Holding Companies shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Holding Companies. The Holding Companies agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Holding Companies has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Holding Companies for the expense of such disposition, after giving the Holding Companies thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Section 156(c) Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Holding Companies, so long as any such changes do not materially interfere with ongoing services provided to the Holding Companies in connection with the Holding Companies' chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Holding Companies' request, KCC shall be authorized to establish accounts with financial institutions in the name of and as agent for the Holding Companies. To the extent that certain financial products are provided to the Holding Companies pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Holding Companies shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Holding Companies shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Holding Companies becomes aware of with respect to the services provided by KCC under this Agreement. The Holding Companies' indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Holding Companies or any person making a claim through or under the Holding Companies for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Holding Companies for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC's liability to the Holding Companies for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Holding Companies and actually paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. The Holding Companies is responsible for the accuracy of the programs, data and information it or any Holding Companies Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Holding Companies and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Holding Companies. The Holding Companies reviews and approves all schedules and statements filed on behalf of, or by, the Holding Companies; KCC bears no responsibility for the accuracy or contents therein. The Holding Companies agrees to initiate and maintain backup files that would allow the Holding Companies to regenerate or duplicate all programs and data submitted by the Holding Companies to KCC.

D. The Holding Companies agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.



KCC AGREEMENT FOR SERVICES

X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

XI. INDEPENDENT CONTRACTORS

The Holding Companies and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Company
Address
City, ST Zip
Attn:
Tel:
Fax:

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Holding Companies represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Holding Companies and an officer of KCC.



KCC AGREEMENT FOR SERVICES

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof. For that purpose, the parties hereto consent to the jurisdiction and venue of an appropriate court located in Los Angeles County, State of California.

XVIII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT C

Declaration of Evan Gershbein

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

-----	X
	:
In re:	: Chapter 11
	:
TGHI, INC., <u>et al.</u> ,	: Case No. 16-10300(MEW)
	:
Debtors. ¹	: Joint Administration Pending
	:
-----	X

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE DEBTORS’
APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION OF
KURTZMAN CARSON CONSULTANTS, LLC AS THE CLAIMS
AND NOTICING AGENT AND APPROVING RELATED AGREEMENT**

Evan Gershbein makes this declaration under 28 U.S.C. § 1746, and states the following:

1. I am a Senior Vice President of Corporate Restructuring Services of Kurtzman Carson Consultants, LLC (“**KCC**”), and I am authorized to make and submit this declaration on behalf of KCC. This declaration is submitted in support of the application (the “**Application**”) of TGHI, Inc. (“**Holdings**”) and Parent THI, Inc. (“**Parent**”), as chapter 11 debtors and debtors in possession (each a “**Debtor**” and collectively the “**Debtors**”) in the above-referenced chapter 11 cases (the “**Chapter 11 Cases**”), for authorization, pursuant to 28 U.S.C. § 156(c), for entry of an order authorizing the Debtors to employ and retain Kurtzman Carson Consultants LLC (“**KCC**”) as claims and noticing agent (“**Claims and Noticing Agent**”) for the Debtors in connection with the Debtors’ Chapter 11 Cases.² The statements contained herein are based upon my personal knowledge.

¹ The Debtors, and, if applicable, the last four digits of their taxpayer identification numbers are as follows: Parent THI, Inc. (5521) and TGHI, Inc. (3814). The Debtors’ business address is 1211 North Miller Street, Anaheim, CA 92806.

² The Debtors will also seek, by separate application, retention of KCC as administrative agent.

2. KCC is one of the country's leading Chapter 11 administrators with expertise in noticing, claims processing, balloting administration and distribution. KCC is well-qualified to provide experienced claims and noticing services in connection with these Chapter 11 Cases. KCC is or was retained as the claims and noticing agent in a number of large chapter 11 cases in this jurisdiction, which include: In re Eagle Bulk Shipping, Inc., No. 14-12303 (SHL) (Bankr. S.D.N.Y. Aug. 7, 2014) [Docket No. 30]; In re ConnectEdu, Inc., No. 14-11238 (SCC) (Bankr. S.D.N.Y. May 1, 2014) [Docket No. 26]; In re MPM Silicones, LLC, No. 14-22503 (RDD) (Bankr. S.D.N.Y. Apr. 15, 2014) [Docket No. 36]; In re Metro Affiliates, Inc., No. 13-13591 (SHL) (Bankr. S.D.N.Y. Nov. 7, 2013) [Docket No. 43]; In re Flat Out Crazy, LLC, No. 13-22094 (RDD) (Bankr. S.D.N.Y. Jan. 29, 2013) [Docket No. 40]; In re Residential Capital, LLC, No. 12-12020 (MG) (Bankr. S.D.N.Y. May 16, 2012) [Docket No. 96]; In re LightSquared Inc., No. 12-12080 (SCC) (Bankr. S.D.N.Y. May 15, 2012) [Docket No. 34]; In re Grubb & Ellis, No. 12-10685 (MG) (Bankr. S.D.N.Y. Feb. 23, 2012) [Docket No. 33]; In re Eastman Kodak Co., No. 12-10202 (ALG) (Bankr. S.D.N.Y. Jan. 19, 2012) [Docket No. 47]; In re The Connaught Group, No. 12-10512 (SMB) (Bankr. S.D.N.Y. Feb. 21, 2012) [Docket No. 46]; In re Jobson Med. Info. Holdings, LLC, No. 12-10434 (SHL) (Bankr. S.D.N.Y. Feb. 3, 2012) [Docket No. 28]; In re Hostess Brands, Inc., No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) [Docket No. 201].

3. The Debtors selected KCC to serve as Claims and Noticing Agent for the Debtors' estates, as set forth in more detail in the Application filed contemporaneously herewith. To the best of my knowledge, neither KCC nor any of its professional personnel, have any relationship with the Debtors that would impair KCC's ability to serve as Claims and Noticing Agent. KCC does have relationships with some of the Debtors' creditors, but they are in matters completely unrelated to these Chapter 11 Cases, either as vendors or in cases where KCC serves

in a neutral capacity as a class action settlement claims administrator or bankruptcy administrator. KCC's assistance in the cases where KCC acts as a class action settlement claims administrator has been primarily related to the design and dissemination of legal notice and other administrative functions in class actions.

4. In addition, KCC personnel may have relationships with some of the Debtors' creditors; however, such relationships are of a personal, financial nature and completely unrelated to these Chapter 11 Cases. KCC has working relationships with certain of the professionals retained by the Debtors and other parties herein but such relationships are completely unrelated to these Chapter 11 Cases. KCC has and will continue to represent clients in matters unrelated to these Chapter 11 Cases and has had and will continue to have relationships in the ordinary course of its business with certain vendors and professionals in connection with matters unrelated to these Chapter 11 Cases.

5. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that is materially adverse to the Debtors' estate or any class of creditors or equity security holders.

6. KCC is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, in that KCC and its professional personnel:

- a. are not creditors, equity security holders or insiders of the Debtors;
- b. are not and were not, within two years before the date of the filing of these Chapter 11 Cases, directors, officers or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests of the Debtors' estates or any class of creditors or equity security holders,

by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

7. KCC has not been retained to assist any entity or person other than the Debtors on matters relating to, or in connection with, these Chapter 11 Cases. If KCC's proposed retention is approved by this Court, KCC will not accept any engagement or perform any service for any entity or person other than the Debtors in these Chapter 11 Cases without the express consent and authority of the Debtors; provided, however, that contemporaneous with the filing of the Application or shortly thereafter, the Debtors intend to file a separate application to retain KCC pursuant to section 327 of the Bankruptcy Code to provide additional services outside the scope of 28 U.S.C. §156(c). In addition, KCC may provide professional services to entities or persons that may be creditors or parties-in-interest in these Chapter 11 Cases, which services do not relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

8. KCC represents, among other things, that:

- a. It will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims and Noticing Agent;
- b. By accepting employment in these Chapter 11 Cases, KCC waives any right to receive compensation from the United States government in these Chapter 11 Cases;
- c. In its capacity as Claims and Noticing Agent, KCC will not be an agent of the United States and will not act on behalf of the United States; and
- d. KCC will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent.

9. Subject to the Court's approval, the Debtors have agreed to compensate KCC for professional services rendered pursuant to 28 U.S.C. §156(c) in connection with these Chapter 11 Cases according to (a) the terms and conditions of the retention agreement by and between the Debtors and KCC, a true and correct copy of which is attached as Exhibit B to the

Application, and (b) a separate pricing schedule, reflecting further agreed upon discounts provided by KCC to the Debtors, which will be disclosed to the Debtors' counsel, the Office of the United States Trustee, counsel for any official committee appointed in these cases and any interested party upon request. Payments are to be based upon the submission to the Debtors by KCC of a billing statement, which includes a detailed listing of services and expenses, at the end of each calendar month. [Prior to the Petition Date, the Debtors paid to KCC the amount of \$7,500.00. KCC shall 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 Retention Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Retention Agreement.

10. KCC will comply with all requests of the Clerk of the Court and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

* * *

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 5, 2016
New York, New York

/s/ Evan Gershbein