

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

<p>In Re:</p> <p>Vanity Shop of Grand Forks, Inc.,</p> <p>Debtor.</p>	<p>Case No.: 17-30112</p> <p>Chapter 11</p>
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ORDER AUTHORIZING RETENTION AND APPOINTMENT OF KURTZMAN CARSON CONSULTANTS, LLC AS ADMINISTRATIVE AGENT FOR THE DEBTOR-IN-POSSESSION PURSUANT TO §§ 327(A), 328 AND 330 AND RULES 2014 AND 2016 OF THE FEDERAL RULES OF CIVIL PROCEDURE, *NUNC PRO TUNC* TO THE PETITION DATE

Debtor filed an Application for an Order Appointing Kurtzman Carson Consultants, LLC as Administrative Agent for the Debtor-In-Possession Pursuant to Sections 327(a), 328 and 330 and Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure, Nunc Pro Tunc to the Petition Date (the “**Application**”).¹ Debtor served the Application.

Upon review of the Application, Declaration of Robert Jordan, the Engagement Agreement, the Declaration of Jill Motschenbacher, testimony at the hearing and other documents filed in this case, the Court finds cause for approving the Application.

IT IS ORDERED THAT:

1. Application is APPROVED as provided below.
2. Debtor is authorized to employ and retain KCC as its Administrative Agent *nunc pro tunc* to the Petition Date on the terms set forth in the Application, the Engagement

¹ Capitalized terms used but not otherwise defined in this Order shall have the meanings ascribed to such terms in the Application or First Day Declaration, as applicable.



Agreement and this Order. KCC is authorized to provide the Administrative Services described in the Application.

3. The terms of the Engagement Agreement, including the fee provisions, are reasonable terms and conditions of employment and are approved. See Exhibit 1, KCC Fee Structure, attached; Doc. 9 at 18-26.

4. With respect to the Administrative Services to be provided as Administrative Agent for the Debtor, KCC shall apply to the Court for allowances of compensation and reimbursement of out-of-pocket expenses incurred in this Chapter 11 case after the filing of the petition in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any order entered in this Chapter 11 case governing professional compensation and reimbursement for services rendered and charges and disbursements incurred. Services, fees and expenses incurred for work performed pursuant to KCC's retention under 11 U.S.C. § 327 shall not be invoiced or paid pursuant to KCC's retention under 28 U.S.C. § 156(c). The rates charged by KCC shall be in accordance with KCC's prepetition fee schedule. See Exhibit 1, KCC Fee Structure, attached.

5. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

6. KCC is authorized and empowered to take all actions necessary to comply with all duties set forth in the Application and this Order.

7. Notwithstanding anything to the contrary in the Engagement Agreement, the Application, or the Jordan Declaration, the Debtor shall indemnify KCC under the terms of the Engagement Agreement; subject the following:

- a. KCC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.
- b. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtor alleges the breach of KCC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co., et al.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by the Retention Order.
- 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), or (ii) the entry of an order closing this Chapter 11 case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by the Retention Order), including without limitation the advancement of defense costs, KCC must file an application therefore in this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.
- d. There shall be no limitation of liability in favor of KCC during the pendency of the Debtor's Chapter 11 case.
- e. The provision of the Engagement Agreement (paragraph XVII) that allows for payment of attorney's fees to the prevailing party in the event of a dispute shall be disregarded during the pendency of this Chapter 11 case to the extent it conflicts with the Bankruptcy Code.

8. In the event of an inconsistency between the Application, the Engagement Agreement and this Order, this Order shall govern.

9. In the event the Chapter 11 case is converted to a Chapter 7 case, the Chapter 7 trustee shall have discretion to decide whether to continue the employment of KCC.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, or 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

11. Notwithstanding any term in the Engagement Agreement to the contrary, including but not limited to choice of law provisions set forth in the Engagement Agreement, this Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated this 6th day of March, 2017.



SHON HASTINGS, JUDGE
UNITED STATES BANKRUPTCY COURT



FEE STRUCTURE

Consulting Services & Rates¹

Position **Hourly Rate**

Analyst \$25 - \$50

The Analyst processes incoming mail, including proofs of claim, ballots, creditor correspondence and returned mail. Also assists with the generation of mailing services.

Technology/Programming Consultant \$35 - \$70

The Technology/Programming Consultant assists with complex system requests, including unique claim/ballot reporting and custom website updates.

Consultant/Senior Consultant \$70 - \$160

The Senior Consultant manages the various data collection processes required by the Chapter 11 process. This includes, among other things, compiling the creditor matrix and Schedules/SOFAs (and generating drafts of same for counsel and advisors), reviewing and processing claims, overseeing contract review, overseeing all mailings and generating custom claim and ballot reports. KCC's Senior Consultants average over seven years of experience.

The Consultant is the day-to-day contact for mailings, including the preparation and filing of affidavits of service (a critical due process component). He/she also responds to creditor and counsel inquiries, maintains the public access website, identifies actionable pleadings (i.e., claims objections, notices of transfer, withdrawals, etc.) and updates the official claims register. KCC's Consultants average over six years of experience.

Director/Senior Managing Consultant \$175

The Director/Senior Managing Consultant is the primary contact for the company, counsel and other professionals and oversees and supports the entirety of an engagement. KCC's Directors and SMCs average over eight years of experience and are generally former practitioners. In addition, Rob Jordan, who has over 12 years of restructuring experience, will serve as an additional supervisory layer at this level at no charge.

Executive Vice President Waived

The Executive Vice President oversees and manages KCC's Restructuring group. Alby Kass, former restructuring attorney with over 12 years of experience will also supervise this matter at no charge.

Weekend, holidays and overtime Waived



¹ Please note that additional professional services not covered by this proposal will be charged at hourly rates, including any outsourced services performed under our supervision and control.



FEE STRUCTURE

Position **Hourly Rate**

Securities Director/Solicitations Senior Consultant \$200

The Securities Director/Solicitation Senior Consultant is the day-to-day contact and acts as advisor on transactions including balloting with treatment election, rights offers, exchange offers and complex plan distributions. This position handles service of related materials to banks, brokers and agents and manages tabulation and audit processes, preparing detailed reporting of results. In addition, the Solicitation Senior Consultant provides support on all voting, tabulation, Schedule and SOFA services.

Securities Senior Director/Solicitation Lead \$215

The Solicitation Lead/Securities Director oversees all activities of the group and provides counsel with respect to solicitation and noticing events ensuring that processes employed are effective and practical for securities depositories, bank, brokers, nominees and their agents. In addition, the Solicitation Lead provides counsel on all voting, tabulation, Schedule and SOFA services.

Printing Services & Noticing Services

Printing	\$0.10 per image (volume discounts apply)
Labels	Waived
Document folding and inserting	Waived
Envelopes	Varies by size
E-mail noticing	Waived ²
Fax noticing	\$0.08 per page
Claim Acknowledgement Card	Waived
Insert creditor information into customized documents	Waived
Newspaper and legal notice publishing	Quote prior to publishing

Claims Administration & Management Expenses

License fee and data storage	\$0.10 per creditor per month
Database and system access (unlimited users)	Waived
Custom client reports	Waived
Access to KCC CaseView (secure, password protected)	Waived
<ul style="list-style-type: none"> • Proprietary, secured, password protected portal for unlimited users • Comprehensive case data, including extensive real time analytics on claim, solicitation and processing information • Functionality to run or request customized reports summarizing case analytics 	

KCC eServices

Case website set up & hosting	Waived
Automated updates of case docket and claims register	Waived
Online claims filing (ePOC)	Waived

² A set-up fee for email services larger than 500 parties may apply. This set-up fee varies depending on the total number of parties.



FEE STRUCTURE

Document Management/Imaging

Electronic imaging (scanning & bar coding)	\$0.10 per imaged page
Virtual Data Room	Quote prior to VDR set-up
CD-ROMS (mass document storage)	Varies upon requirements

Call Center Support Services

Case-specific voice-mail box for creditors	Waived
Interactive Voice Response ("IVR")	Set-up and per minute fee waived
Monthly maintenance charge	Waived
Management of Call Center	Standard hourly rates

Disbursements

Check issuance	Quote prior to printing
W-9 mailing and maintenance of TIN database	See hourly rates and noticing charges