

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA**

In Re: Vanity Shop of Grand Forks, Inc., Debtor.	Case No.: 17-30112 Chapter 11
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**ORDER AUTHORIZING RETENTION AND APPOINTMENT OF KURTZMAN
CARSON CONSULTANTS, LLC AS CLAIMS, NOTICING AND BALLOT AGENT
FOR THE DEBTOR-IN-POSSESSION PURSUANT TO 28 U.S.C. § 156(C), *NUNC
PRO TUNC* TO THE PETITION DATE**

Debtor filed an Application for an Order Appointing Kurtzman Carson Consultants, LLC as Claims, Noticing and Ballot Agent for the Debtor-In-Possession Pursuant to 28 U.S.C. § 156(c), 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. The Application is APPROVED.
2. The Debtor is authorized to employ and retain KCC as its claims, noticing and ballot agent *nunc pro tunc* to the Petition Date in the Debtor’s Chapter 11 case under the terms of the Engagement Agreement and KCC is authorized and directed to perform noticing and

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.



balloting services, and to receive, maintain, record, and otherwise administer the proofs of claim filed in this Chapter 11 case, and all related tasks, all as described in the Application (the “**Claims, Noticing, and Balloting Services**”).

3. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this Chapter 11 case and is authorized and directed to maintain an official claims register for the Debtor and to provide a certified duplicate of it upon the request of the Clerk.

4. Notwithstanding KCC's service as a custodian pro tempore, the Clerk shall at all times remain the permanent custodian of the proofs of claim filed in this Chapter 11 case and of the Court's proofs of claim registers in this Chapter 11 case, even as those records and those registers are held and maintained by KCC. KCC shall promptly provide the Clerk's Office with any original Court document or any certified duplicate of a Court document that it may have, upon the request of the Clerk's Office for such original document or such certified duplicate. Nothing in this Order limits the authority of the Clerk's Office in managing the records of the Court.

5. The Clerk's Office shall provide KCC with Electronic Case Filing (“**ECF**”) credentials that allow KCC to receive ECF notifications and file certificates of service.

6. KCC is authorized and directed to obtain a post office box or address for the receipt of proofs of claim.

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

8. The Debtor is 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, subject to the review provisions in paragraphs 9 and 10 below. The rates charged by KCC shall be in accordance with KCC's prepetition fee schedule. See Exhibit 1, KCC Fee Structure, attached. Debtor is not authorized to pay KCC more than the sum included in the Budget [Doc. 23 at 28] approved by this Court unless and until creditors with liens on cash collateral are paid in full.

9. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtor, the office of the U.S. Trustee, counsel for the Debtor, counsel for Wells Fargo, N.A., counsel for any official committee, if any, monitoring the expenses of the Debtor and any party-in-interest who specifically requests service of the monthly invoices. Services, fees and expenses incurred for work performed pursuant to KCC's retention under 28 U.S.C. § 156(c) shall not be invoiced in any administrative application for fees that KCC may seek to file as a professional pursuant to 11 U.S.C. § 327.

10. 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 the parties may seek resolution from the Court if resolution is not achieved. If the Court does not approve the disputed fees and expenses, the same will be subject to disgorgement by KCC.

11. 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 Debtor's estate.

12. KCC may apply its retainer to all prepetition invoices for services provided under this Order, which retainer shall be replenished to the original retainer amount, subject to the Budget approved by the Court. See Doc. 23 at 28. KCC may hold its retainer under the Engagement Agreement during this Chapter 11 case as security for the payment of fees and expenses under the Engagement Agreement.

13. The Debtor shall indemnify KCC under the terms of the Engagement Agreement, provided that 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.

14. KCC shall serve notice of the commencement of this Chapter 11 Case and the initial 11 U.S.C. § 341 meeting (the “**341 Meeting**”) of creditors. KCC shall obtain the necessary form notice from the Clerk’s Office and shall not modify the form notice without the Court’s consent. Any claims bar date notice must be approved by the Court prior to being issued by KCC. KCC is directed to coordinate the service of the notice of commencement of this Chapter 11 case and the initial 341 Meeting with the Clerk’s Office, to ensure that service is in compliance with the Local Bankruptcy Rules.

15. The Court may set a status conference at any time to discuss or review the operations of KCC in connection with this Order and to address any matters regarding the Court’s records and the proofs of claim register. The Court may issue additional or supplemental orders as necessary and appropriate.

16. 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 this Order.

17. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this Chapter 11 case (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 this Order), 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. 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. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution or reimbursement.

18. KCC shall comply with all relevant statutory provisions and rules of procedure, including Local Rules, general orders, and applicable guidelines.

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

20. Debtor's counsel shall notify both the Clerk and KCC within seven (7) days of an order of dismissal or conversion of this Chapter 11 case. 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.

21. At the conclusion of this Chapter 11 case or upon termination of KCC's services, the Debtor 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. The Debtor may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by KCC that is not specifically authorized by this Order.

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

24. 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,

the Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

25. KCC shall not cease providing claims processing services during this Chapter 11 case for any reason, including nonpayment, without an order of the Court.

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

27. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or other Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated this 6th day of March, 2017.

A handwritten signature in black ink that reads "Shon Hastings". The signature is written in a cursive, flowing style.

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