



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed September 8, 2016


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
§
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11
Picture People, §
§
Debtor. §

ORDER PURSUANT TO 28 U.S.C. § 156(c) AUTHORIZING THE RETENTION AND APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING, AND BALLOTING AGENT NUNC PRO TUNC TO THE PETITION DATE

On September 7, 2016, the Court conducted a hearing to consider *Debtor's Application for Entry of an Order, Pursuant to 28 U.S.C. § 156(c), Authorizing the Retention and Appointment of Kurtzman Carson Consultants LLC as Claims, Noticing, and Balloting Agent Nunc Pro Tunc to the Petition Date* (the "Application") filed by the above-captioned Debtor (the "Debtor"). The Court finds that (i) it has jurisdiction over the matters raised in the Application pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C.



§ 157(b)(2); (iii) the relief requested in the Application is in the best interests of the Debtor, its estate and creditors; (iv) proper and adequate notice of the Application and the hearing thereon has been given and that no other or further notice is necessary; (v) Kurtzman Carson Consultants LLC (“KCC”) (a) holds no interest adverse to the Debtor or its estate in the matters upon which it is sought to be engaged; (b) is a disinterested person as that term is defined pursuant to 11 U.S.C § 101(14); and (c) has disclosed any connections with the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee; (vi) none of the representations or engagements set out in the *Declaration of Evan Gershbein in Support of Debtor’s Application for Entry of an Order, Pursuant to 28 U.S.C. § 156(c), Authorizing the Retention and Appointment of Kurtzman Carson Consultants LLC as Claims, Noticing, and Balloting Agent Nunc Pro Tunc to the Petition Date* constitute a conflict-of-interest or impair the disinterestedness of KCC or otherwise preclude the Debtor’s retention of KCC in this case; and (vii) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein. Therefore,

IT IS HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtor is authorized to retain KCC and KCC is appointed as Claims and Noticing Agent, effective *nunc pro tunc* the Petition Date, under the terms and conditions of the Engagement Agreement, and KCC is authorized and directed to perform all noticing, claims docketing and processing, balloting, and all related tasks in this Chapter 11 Case, all as described in the Application (collectively, the “Claims, Noticing, and Balloting Services”).

3. KCC is directed to perform all of the noticing required to be performed by the Clerk pursuant to Rule 2002 and any other applicable Bankruptcy Rule.

4. KCC shall: (1) prepare and serve notices required in this Chapter 11 Case; (2) file a certificate of service within seven (7) days after each service, which includes a copy of the notice, a list of the persons to whom it was mailed in alphabetical order, and the date of mailing; (3) if requested by the Debtor, print, mail and tabulate ballots for purposes of voting on a chapter 11 plan to which a disclosure statement has been approved by the Court; (4) assist with the preparation, maintenance and updating of the Debtor's master service list and databases of creditors; (5) furnish a notice of bar date, approved by the Clerk, for the filing of a proof of claim or interest together with Official Form B410 to each creditor; (6) record all transfers of claims and provide notice of each transfer as required by Bankruptcy Rule 3001(e); (7) provide other technical and document management services of a similar nature requested by the Debtor or the Clerk; and (8) promptly comply with any further conditions and requirements as the Clerk or the Court may hereafter prescribe.

5. KCC shall serve as the agent for the Clerk and custodian of court records and, as such, shall be designated as the authorized repository for all proofs of claim or proofs of interest filed in these cases and is authorized and directed to maintain an official claims register for the Debtor and to provide the Clerk with a certified electronic duplicate thereof on a monthly basis, unless otherwise directed by the Clerk or the Court.

6. KCC will provide access to the public for examination of copies of the proofs of claim or proofs of interest filed without charge during regular business hours.

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

8. The Debtor is authorized to compensate KCC for Claims, Noticing, and Balloting Services 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. However, to the extent that the Debtor objects to the reasonableness of any service, expense, and/or supply provided by KCC, the Debtor may contest the amount of any invoice presented to it for payment.

9. 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 of the matter from the Court if resolution is not achieved.

10. 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 United States Trustee for the Northern District of Texas, counsel for the Debtor, counsel for any official committee monitoring the expenses of the Debtor and any party in interest who specifically requests service of the monthly invoices.

11. If this Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code and if claims agent representation would be necessary in the converted chapter 7 case, KCC shall continue to be paid in accordance with 28 U.S.C. § 156(c) under the terms set forth in this Order and in the Engagement Agreement.

12. Pursuant to Bankruptcy Code § 503(b)(1)(A), the fees and expenses of KCC under this Order shall be an administrative expense of the Debtor's estate.

13. KCC may apply its retainer to all prepetition invoices and KCC may hold its retainer under the Engagement Agreement during the Chapter 11 Case as security for the payment of fees and expenses incurred under the Engagement Agreement.

14. The Debtor shall indemnify KCC under the terms of the Engagement Agreement and pursuant to this Order.

15. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the Claims, Noticing, and Balloting Services, as provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

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 losses, claims, damages, judgments, liabilities and expenses that are: (i) judicially determined (the determination having become final) to have resulted from, have arisen from, or be related to KCC's gross negligence or willful misconduct; (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 under applicable law; or (iii) are settled prior to a judicial determination under (i) or (ii) of this paragraph 16, 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. 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), and (ii) the entry of an order closing these cases, should KCC believe 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), including, without limitation, the advancement of defense costs, KCC must file an application in this Court, and the Debtor may not pay any such amounts to KCC before the entry of an order by this Court approving such application and the payment requested therein. 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.

18. In the event KCC is unable or unwilling to provide the Claims, Noticing, and Balloting Services, KCC shall immediately notify the Clerk and the Debtor's counsel and cause to have all original proofs of claim and proofs of interest and computer information turned over to either (i) another claims and noticing agent who has been authorized by the Court order to act as substitute claims and noticing agent, or (ii) the Clerk.

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

20. After entry of an order terminating KCC's services, upon the closing of these cases, or for any other reason, KCC shall be responsible for archiving all proofs of claim or proofs of interest with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtor in connection therewith.

21. Notwithstanding any term in the Engagement Agreement to the contrary, in no event will KCC's liability during the cases be limited to the amount billed to or paid by the Debtor for KCC's services.

22. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

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

25. Notwithstanding any term in the Engagement Agreement to the contrary, this Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

###END OF ORDER###

Submitted by:

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PROPOSED ATTORNEYS FOR DEBTOR