



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 April 20, 2022

United States Bankruptcy Judge

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

In re:

Northwest Senior Housing Corporation, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-30659 (MVL)

(Joint Administration Requested)

ORDER GRANTING DEBTORS' APPLICATION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE RETENTION AND EMPLOYMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS, NOTICING AND SOLICITATION AGENT, NUNC PRO TUNC TO THE PETITION DATE AND (B) GRANTING RELATED RELIEF

Upon the *Debtors' Application for Entry of an Order (A) Authorizing the Employment and Retention of Kurtzman Carson Consultants LLC as Claims, Noticing, and Solicitation Agent, nunc pro tunc to the Petition Date and (B) Granting Related Relief* (the "**Application**")²; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Northwest Senior Housing Corporation (1278) and Senior Quality Lifestyles Corporation (2669). The Debtors' mailing address is 8523 Thackery Street, Dallas, Texas 75225.

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



U.S.C. §§ 157 and 1334, and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and the Court having held a hearing on the Application; and all objections, if any, to the Application have been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is approved on a final basis as set forth herein.
2. The Debtors are authorized to retain and appoint KCC as Claims and Noticing Agent under the terms of the Services Agreement as set forth in this Order, and KCC is authorized and directed to perform noticing and balloting services and to receive, maintain, record, and otherwise administer the proofs of claim filed in the Chapter 11 Cases, and other related tasks as described in the Application, the Services Agreement, and this Order. The Clerk shall provide KCC with ECF credentials that allow KCC to receive ECF notifications and file certificates of service.
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 the Chapter 11 Cases and is authorized and directed to maintain the official claims register for the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. KCC is authorized and directed to provide an electronic interface for filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. KCC shall provide public access to the claims register, including complete proofs of claim with attachments, if any, without charge.

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

6. Notwithstanding Bankruptcy Code Sections 330 and 331 and Bankruptcy Rule 2016, the Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. KCC shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the Office of the United States Trustee, counsel for the Debtors, counsel for any official committee 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 that may arise relating to the Services Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Without further order of the Court, pursuant to Bankruptcy Code Section 503(b)(1)(A), the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

10. Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement provided that KCC provide notice to the Court in the event that KCC's rates increase in connection with the Services Agreement and shall file a summary application at the end of its engagement for the allowance of compensation and reimbursement of expenses.

11. KCC may apply its advance to all prepetition invoices, which advance may be replenished to the original advance amount, and thereafter, KCC may hold its advance under the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

12. The Debtors shall indemnify KCC under the terms of the Services Agreement, as modified pursuant to this Order. For the avoidance of doubt, no indemnification rights are being granted in contravention of Fifth Circuit authority, including *Bank of N.Y. Tr. Co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009).

13. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than the services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.

14. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen solely from KCC's gross negligence, willful misconduct, criminal

conduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (if any) as provided in this Order; (b) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (c) of any type for which the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002); or (d) settled prior to a judicial determination under (a) or (b), 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 Services Agreement as modified by this Order.

15. If, prior to the entry of an order closing the Chapter 11 Cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. If, prior to the entry of an order closing the Chapter 11 Cases, KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Services Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Court after notice and a hearing. 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

Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

16. In the event KCC is unable to provide the Services set forth in this Order, KCC will immediately notify the Clerk and the Debtors' attorney and, upon approval of this Court, 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.

17. After entry of an order terminating KCC's services, upon the closing of the Chapter 11 Cases, or for any other reason, KCC shall be responsible for archiving all proofs of claim with the Federal Archives Record Administration, if applicable, and shall be compensated by the Debtors in connection therewith.

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

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

20. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

21. Notwithstanding any Bankruptcy Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

22. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application, and the requirements of the Bankruptcy Rules are satisfied by such notice.

23. Notwithstanding anything to the contrary in the Services Agreement, so long as the Cases are pending (a) the Bankruptcy Court shall have exclusive venue over all matters arising

from or relating to KCC's retention in the Chapter 11 Cases and this Order, and (b) KCC shall not assess or charge any late fees against the Debtors and/or the Debtors' estates.

END OF ORDER

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