

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**APPLICATION FOR ENTRY OF AN ORDER APPOINTING
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AND
NOTICING AGENT EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

The debtor and debtor in possession in the above-captioned case (the “Debtor”) hereby moves for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Retention Order”) pursuant to section 156(c) of title 28 of the United States Code and section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), appointing Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent (“Claims Agent”) in the Debtor’s chapter 11 case (the “Section 156(c) Application”) effective *nunc pro tunc* to the Petition Date (as defined below). In support of the Application, the Debtor relies upon and incorporates by reference the *Declaration of Evan Gershbein in Support of the Debtor’s Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective Nunc Pro Tunc to the Petition Date* (the “Gershbein Declaration”), attached hereto as **Exhibit B**, and further respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C.

¹ The last four digits of the Debtor’s taxpayer identification number are 7343. The Debtor’s principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.



§ 157(b)(2).

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory basis for the relief requested herein are section 156(c) of title 28 of the United States Code, section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rules 2002-1(l) and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and the Court’s Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c) (the “Claims Agent Protocol”), instituted by the Office of the Clerk of the Bankruptcy Court for the District of Delaware (the “Clerk”) on February 1, 2012.

4. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

5. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor is operating its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Motion, no trustee, examiner, or committee has been requested or appointed in the Chapter 11 Case.

6. Additional background facts concerning the Debtor and the commencement of the Chapter 11 Case are provided in the *Declaration of Richard T. Allorto, Jr. in Support of Chapter 11 Petition and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith.

RELIEF REQUESTED

7. This Section 156(c) Application is made pursuant to 28 U.S.C. § 156(c), section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2002(f), and Local Rules 2002-1(l) and 9013-

1(m) for an order appointing KCC to act as the Claims Agent in order to assume full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim, solicitation, and balloting in the Chapter 11 Case. The Debtor's selection of KCC to act as the Claims Agent has satisfied the Claims Agent Protocol, in that the Debtor has obtained and reviewed engagement proposals from at least two (2) other court-approved claims and noticing agents to ensure, selection through a competitive process. Moreover, the Debtor submits, 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 retention are set forth in the *KCC Agreement for Services* annexed hereto as **Exhibit C** (the "Services Agreement"); *provided, however*, that KCC is seeking approval solely of the terms and provisions as set forth in this Section 156(c) Application and the Retention Order attached hereto.

8. Although the Debtor has not yet filed its schedules of assets and liabilities (collectively, the "Schedules"), it anticipates that there will numerous entities to be noticed. In view of the number of anticipated claimants, the Debtor submits that the appointment of a claims and noticing agent is both necessary and in the best interests of both the Debtor's estate and its creditors.

9. KCC has acted as a 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 Chaparral Energy, Inc.*, Case No. 20-11947 (MFW) (Bank. D. Del. Aug. 18, 2020) [D.I. 75]; *In re HRI Holding Corp., et al.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Nov. 15, 2019) [D.I. 54]; *In re Extraction Oil and Gas, Inc., et al.*, Case No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) [D.I. 81]; *In re Skillsoft Corporation, et al.*, Case No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020) [D.I. 81]; *In re Templar Energy LLC, et al.*, Case No. 20-11441 (BLS) (Bankr. D. Del. June 2, 2020) [D.I. 53]; *In re Akorn, Inc., et al.*, Case No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) [D.I. 71]; *In re TZEW Holdco LLC, et al.*, Case No. 20-10910 (CSS) (Bankr. D. Del. Apr. 14, 2020) [D.I. 48]; *In re Valeritas Holdings, Inc., et al.*, Case

No. 20-10290 (LSS) (Bankr. D. Del. Feb. 12, 2020) [D.I. 51].²

10. By appointing KCC as the Claims Agent in this Chapter 11 Case, 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.

11. This Section 156(c) Application pertains only to the work to be performed by KCC under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f), and any work to be performed by KCC outside of this scope is not covered by this Section 156(c) Application or by any Order granting approval hereof.

12. Specifically, KCC will perform the following tasks in its role as the Claims Agent (the "Claims and Noticing Services"), as well as all quality control relating thereto:

- a. Prepare and serve required notices and documents in the case in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtor and/or the Court, including (i) notice of the commencement of the case 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 and confirmation of the Debtor's plan of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtor or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Case;
- b. Maintain an official copy of the Debtor's Schedules, listing the Debtor's 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), (g), 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;

² The referenced orders are voluminous in nature and, therefore, are not attached to this Section 156(c) Application; however, in accordance with Local Rule 7007-2, the Debtor's proposed counsel has copies of each order and will make them available to this Court or to any party that requests them. Additionally, the orders are available on this Court's CM/ECF PACER site at the cited docket numbers and on the dates specified above.

- d. Furnish a 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, 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, correspondence, ballots, 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 (7) business days of service which includes (i) either a copy of the notice 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 the Debtor (the "Claims Register") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify in the Claims Register 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.*), and (vi) any disposition of the claim;
- i. Implement necessary security measures to ensure the completeness and integrity of the Claims Register 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 KCC, not less than weekly;
- l. Upon completion of the docketing process for all claims received to date for

the Chapter 11 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 Chapter 11 Case as directed by the Debtor or the Court, including through the use of a case website and/or call center.
- o. If the case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to KCC of entry of the order converting the case;
- p. Thirty (30) days prior to the close of the Chapter 11 Case, to the extent practicable, request that the Debtor submits to the Court a proposed Order dismissing KCC and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of the Chapter 11 Case;
- q. Within seven (7) days of notice to KCC of entry of an order closing the Chapter 11 Case, provide to the Court the final version of the Claims Register as of the date immediately before the close of the case;
- r. At the close of the case, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Records Center, located at 14700 Townsend Road, Philadelphia, PA 19154-1096 or (ii) any other location requested by the Clerk's Office; and
- s. Provide such other processing, solicitation, balloting, and other administrative services described in the Services Agreement that may be requested from time to time by the Debtor, the Court, or the Clerk's Office.

13. The Claims Register shall be opened to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

14. KCC shall not employ any past or present employee of the Debtor for work that involves the Debtor's Chapter 11 Case.

15. The Debtor respectfully requests that the undisputed fees and expenses incurred

by KCC in the performance of the above services be treated as administrative expenses of the Debtor's estate 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. KCC agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtor, the office of the United States Trustee, counsel for the Debtor, counsel for an official committee, if any, monitoring the expenses of the Debtor and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating the Services 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.

16. The Debtor provided KCC with a prepetition retainer in the amount of \$30,000. KCC seeks to first apply the retainer to all pre-petition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Services Agreement during the case as security for the payment of fees and expenses incurred under the Services Agreement.

17. KCC has informed the Debtor that, subject to Court approval, it will bill at its standard hourly rates, which are set forth in the Services Agreement attached as **Exhibit C** to this Section 156(c) Application.

18. In connection with its retention as the Claims Agent, KCC represents in the Gershbein Declaration, among other things, that:

- a. KCC 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 Agent in the Chapter 11 Case;
- b. By accepting employment in the Chapter 11 Case, KCC waives any rights to receive compensation from the United States government in connection with the Debtor's case;
- c. In its capacity as the Claims Agent in the Chapter 11 Case, KCC will not be

an agent of the United States and will not act on behalf of the United States;
and

- d. It 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.

19. To the extent that there is any inconsistency between this Section 156(c) Application, the Retention Order and the Services Agreement, the Retention Order shall govern.

20. This Section 156(c) Application complies with the *Protocol for the Employment of KCC under 28 U.S.C. § 156(c)* and conforms to the standard section 156(c) application in use in this Court.

BASIS FOR RELIEF REQUESTED

21. The Court is permitted to appoint KCC as the Claims Agent in this Chapter 11 Case. Bankruptcy Rule 2002 generally regulates what notices must be given to creditors and other parties-in-interest in bankruptcy cases. Fed. R. Bankr. P. 2002(f). Under Bankruptcy Rule 2002(f), the Court may direct that a party, other than the Clerk, give notice of the various matters described below. Moreover, pursuant to 28 U.S.C. § 156(c), the Court is authorized to utilize agents and facilities other than the Clerk for the administration of bankruptcy cases. Specifically, the statute states, in relevant part:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

22. Appointing KCC as the Claims Agent will help to expedite and more efficiently facilitate the administration of this Chapter 11 Case, and will relieve the Clerk’s office of administrative burdens. For these reasons, the Debtor respectfully submits that KCC’s

appointment as the Claims Agent is necessary and in the best interests of the Debtor and its estate and will serve to maximize the value of the Debtor's estate for all stakeholders.

RELIEF AS OF THE PETITION DATE IS APPROPRIATE

23. In accordance with the Debtor's request, KCC has agreed to serve as the Claims Agent on and after the Petition Date with assurances that the Debtor would seek approval of its employment and retention, effective as of the Petition Date, so that KCC can be compensated for services rendered before approval of this Section 156(c) Application. The Debtor believes that no party in interest will be prejudiced by granting relief as of the Petition Date as proposed in this Section 156(c) Application, because KCC has provided and continues to provide valuable services to the Debtor's estate immediately upon the commencement of this Chapter 11 Case.

24. Accordingly, the Debtor respectfully requests entry an order authorizing the Debtor to retain and employ KCC as the Claims Agent effective as of the Petition Date.

NOTICE

1. Notice of this Application has been given to: (a) the United States Trustee for the District of Delaware; (b) U.S. Bank National Association as indenture trustee for the Debtor's 7.25% Senior Notes (due 2024) and 6.875% Senior Notes (due 2026); (c) the U.S. Securities and Exchange Commission; (d) the New York Stock Exchange; (e) all individuals or entities that have requested notice in this Chapter 11 Case pursuant to Bankruptcy Rule 2002; (f) the District Director of Internal Revenue for the District of Delaware and all other taxing authorities for the jurisdictions in which the Debtor conducts business; (g) all relevant state attorneys general; (h) the plan sponsor, Medley Management Inc.; (i) Strategic Capital Advisory Services; (j) MOF II GP; (k) Vornado Realty Trust; (l) the holders of the twenty largest unsecured claims against the Debtor; and (m) pursuant to Local Rule 2002-1(e), counsel to any of the foregoing, if known.

NO PRIOR REQUEST

25. No previous motion for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Debtor respectfully requests that this Court: (a) enter an Order, in the form submitted herewith, granting the relief requested herein; and (b) grant to the Debtor such other and further relief as the Court may deem proper.

Dated: March 7, 2021

MORRIS JAMES LLP

/s/ Brya M. Keilson

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*Proposed Counsel to the Debtor
and Debtor-in-Possession*

EXHIBIT A
Retention Order

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**ORDER APPOINTING KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT FOR
THE DEBTOR EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the application (“Section 156(c) Application”)² of the above-captioned debtor and debtor in possession (the “Debtor”) for entry of an Order (this “Order”), appointing Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent (the “Claims Agent”) in the Debtor’s Chapter 11 Case effective *nunc pro tunc* to the Petition Date; all as more fully set forth in the Section 156(c) Application; and upon the First Day Declaration and the Gershbein Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Section 156(c) Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Section 156(c) Application is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and this Court having found that the Debtor’s notice of the Section 156(c) Application and

¹ The last four digits of the Debtor’s taxpayer identification number are 7343. The Debtor’s principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.

² Capitalized terms used and not defined herein have the meanings ascribed to them in the Section 156(c) Application.

opportunity for a hearing on the Section 156(c) Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Section 156(c) Application; and this Court having determined that the legal and factual bases set forth in the Section 156(c) Application establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, as set forth herein.
2. Notwithstanding the terms of the Engagement Agreement attached to the Section 156(c) Application, the Section 156(c) Application is granted solely as set forth in this Order.
3. The Debtor is authorized to retain KCC as the Claims Agent, effective as of the Petition Date, to perform the Claims and Noticing Services set forth in the Section 156(c) Application and under the terms of the Engagement Agreement relating to such services, and KCC is authorized to perform such services.
4. 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 case and is authorized and directed to maintain the official claims register for the Debtor and to provide the Clerk with a certified duplicate thereof upon request of the Clerk.
5. KCC is authorized and directed to provide an electronic interface for the filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. KCC shall provide access to the Claims Register without charge, including access to complete copies of proofs of claim with attachments, if any.
6. KCC is authorized to take such other actions to comply with all duties set forth in the Section 156(c) Application and this Order.
7. KCC shall comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

8. Without further order of this Court, the Debtor is authorized to compensate KCC on a monthly basis in accordance with the terms and conditions of the Engagement Agreement for the Claims and Noticing Services, upon KCC's submission of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith, 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.

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 U.S. Trustee, counsel for any official committee monitoring the expenses of the Debtor, and any party in interest that specifically requests service of the monthly invoices.

10. The parties shall meet and confer in an attempt to resolve any dispute that 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.

11. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, KCC's fees and expenses incurred in connection with the Claims and Noticing Services shall be administrative expenses of the Debtor's Chapter 11 Case.

12. KCC may first apply its retainer to all prepetition invoices and thereafter, have the retainer replenished to the original retainer amount and, thereafter, hold the retainer under the Engagement Agreement during the cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

13. Except to the extent set forth below, the Debtor is authorized to indemnify KCC under the terms of the Engagement Agreement:

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

- (b) 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, bad faith, self-dealing, breach of fiduciary duty (if any) 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 Theater Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i), but determined by this Court, after notice and a hearing, to be a claim or expense for which the Claims Agent should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Debtor's Chapter 11 Case (that order having become a final order no longer subject to appeal), or (b) the entry of an order closing the Debtor's 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), including without limitation the advancement of defense costs, KCC must file an application therefor 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. In the event that KCC seeks reimbursement from the Debtor for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Engagement 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.

15. In the event KCC is unable to provide the Claims and Noticing Services, KCC will immediately notify the Clerk and the Debtor's counsel and cause all original proofs of claim and

computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtor's counsel.

16. KCC shall not cease providing Claims and Noticing Services during the Debtor's Chapter 11 Case for any reason, including nonpayment, without an order of the Court.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtor and KCC are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Section 156(c) Application.

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

EXHIBIT B
Gershbein Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Medley LLC,¹

Debtor.

Chapter 11

Case No. 21-10526 ()

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE DEBTOR'S
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND
APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS
AND NOTICING AGENT EFFECTIVE *NUNC PRO TUNC* TO THE PETITION DATE**

I, Evan Gershbein, under penalty of perjury, declare as follows:

1. I am an Executive Vice President, Corporate Restructuring Services of Kurtzman Carson Consultants LLC ("KCC"), a chapter 11 administrative services firm whose offices are located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California, 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of the above-captioned debtor's (the "Debtor") *Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective Nunc Pro Tunc to the Petition Date*, which was filed contemporaneously herewith (the "Section 156(c) Application").²

3. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, solicitation, balloting,

¹ The last four digits of the Debtor's taxpayer identification number are 7343. The Debtor's principal executive office is located at 280 Park Avenue, 6th Floor East, New York, New York 10017.

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Section 156(c) Application.

and other related services critical to the effective administration of chapter 11 cases. KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing, solicitation, and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders, and all other parties in interest.

4. KCC 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 Chaparral Energy, Inc.*, Case No. 20-11947 (MFW) (Bank. D. Del. Aug. 18, 2020) [D.I. 75]; *In re HRI Holding Corp., et al.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Nov. 15, 2019) [D.I. 54]; *In re Extraction Oil and Gas, Inc., et al.*, Case No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) [D.I. 81]; *In re Skillsoft Corporation, et al.*, Case No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020) [D.I. 81]; *In re Templar Energy LLC, et al.*, Case No. 20-11441 (BLS) (Bankr. D. Del. June 2, 2020) [D.I. 53]; *In re Akorn, Inc., et al.*, Case No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) [D.I. 71]; *In re TZEW Holdco LLC, et al.*, Case No. 20-10910 (CSS) (Bankr. D. Del. Apr. 14, 2020) [D.I. 48]; *In re Valeritas Holdings, Inc., et al.*, Case No. 20-10290 (LSS) (Bankr. D. Del. Feb. 12, 2020) [D.I. 51].³

5. As the claims and noticing agent (the “Claims Agent”), KCC will perform, at the request of the Debtor and the Clerk, the services specified in the Section 156(c) Application and the Engagement Agreement (the “Claims and Noticing Services”) as well as all quality control relating thereto:

³ The referenced orders are voluminous in nature and, therefore, are not attached to this Section 156(C) Application; however, in accordance with Local Rule 7007-2, the Debtor’s proposed counsel has copies of each order and will make them available to this Court or to any party that requests them. Additionally, the orders are available on this Court’s CM/ECF PACER site at the cited docket numbers and on the dates specified above.

- (a) Prepare and serve required notices and documents in the case in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtor and/or the Court, including (i) notice of the commencement of the case 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 and confirmation of the Debtor's plan of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan and (vii) all other notices, orders, pleadings, publications and other documents as the Debtor or Court may deem necessary or appropriate for an orderly administration of the Chapter 11 Case;
- (b) Maintain an official copy of the Debtor's Schedules, listing the Debtor's 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), (g), 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 a 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, 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, correspondence, ballots, 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 (7) business days of service which includes (i) either a copy of the notice served or the docket number(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 the Debtor (the "Claims Register") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify in the Claims Register 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.), and (vi) any disposition of the claim;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Register 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 KCC, not less than weekly;
- (l) Upon completion of the docketing process for all claims received to date for the Chapter 11 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 Chapter 11 Case as directed by the Debtor or the Court, including through the use of a case website and/or call center;
- (o) If the case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to KCC of entry of the order converting the case;
- (p) Thirty (30) days prior to the close of the Chapter 11 Case, to the extent practicable, request that the Debtor submits to the Court a proposed Order dismissing the KCC and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of this Chapter 11 Case;
- (q) Within seven (7) days of notice to KCC of entry of an order closing the Chapter 11 Case, provide to the Court the final version of the Claims Register as of the date immediately before the close of the case;

- (r) At the close of the case, box and transport all original documents, in proper format, as provided by the Clerk's Office, to (i) the Federal Records Center, located at 14700 Townsend Road, Philadelphia, PA 19154-1096 or (ii) any other location requested by the Clerk's Office; and
- (s) Provide such other processing, solicitation, balloting, and other administrative services described in the Engagement Agreement that may be requested from time to time by the Debtor, the Court, or the Clerk's Office.

6. Although the Debtor does not propose to retain KCC under section 327 of the Bankruptcy Code pursuant to the Section 156(c) Application (such retention will be sought by separate application), I caused to be submitted for review by our conflicts system the names of all known potential parties-in-interest (the "Potential Parties in Interest") in this Chapter 11 Case. The list of Potential Parties in Interest was provided by the Debtor and included, among other parties, the Debtor, current members of the Debtor's Board of Trustees, current officers of the Debtor, the Debtor's secured creditors, the Debtor's 20 largest unsecured creditors, and other parties. The results of the conflict check were compiled and reviewed by KCC professionals under my supervision. At this time, and as set forth in further detail herein, KCC is not aware of any connection that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or connections bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to file promptly a supplemental declaration.

7. To the best of my knowledge, and based solely upon information provided to me by the Debtor, and except as provided herein, neither KCC, nor any of its professionals, has any materially adverse connection to the Debtor, its creditors or other relevant parties. KCC may have relationships with certain of the Debtor's creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent, balloting, and/or administrative advisor for another chapter 11 debtor. However, given KCC's neutral

position as claims and noticing agent or administrative advisor in any other cases, KCC does not view such relationships as real or potential conflicts. Further, to the best of my knowledge, any such relationship is completely unrelated to the Chapter 11 Case. Accordingly, to the best of my knowledge, KCC and each of its employees are “disinterested persons,” as that term is defined in section 101(14) of the Bankruptcy Code, and neither KCC nor any of its employees hold or represent an interest adverse to the Debtor’s estate related to any matter for which KCC will be employed.

8. KCC is an indirect subsidiary of Computershare Limited (“Computershare”). Computershare is a financial services and technologies provider for the global securities industry, including providing administrative transfer agent services such as maintaining records of shareholdings and share transfers. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare and its affiliates maintain do not create an interest of KCC that is materially adverse to the Debtor’s estate or any class of creditors or security holders.

9. KCC further represents 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 the Claims Agent;
- (b) by accepting employment in the Debtor’s Chapter 11 Case, KCC waives any right to receive compensation from the United States government;
- (c) in its capacity as the Claims Agent, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (d) it will not employ any past or present employees of the Debtor in connection with its work as the Claims Agent;
- (e) it will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c);

- (f) none of the services provided by KCC as the Claims Agent in this Chapter 11 Case shall be at the expense of the Clerk's office;
- (g) in its capacity as the Claims Agent in this Chapter 11 Case, KCC will not intentionally; and
- (h) it will supplement its disclosure to this Court if any facts or circumstances are discovered that would require such additional disclosure.

10. KCC has and will continue to represent clients in matters unrelated to the Chapter 11 Case. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the Chapter 11 Case in matters unrelated to the Chapter 11 Case. KCC may also provide professional services to Entities or Persons that may be creditors or parties in interest in the Chapter 11 Case, which services do not directly relate to, or have any direct connection with, the Chapter 11 Case or the Debtor.

11. In performing the Claims and Noticing Services, KCC will charge the rates in accordance with its Engagement Agreement. These rates are at least as favorable as the prices KCC charges in other cases in which the firm has been retained to perform similar services.

12. In addition, the indemnification provisions set forth in the Engagement Agreement reflect standard and customary terms of engagement contained in KCC's engagement letters both in and outside of bankruptcy. Based on my experience, these indemnification provisions are similar to provisions in the engagement letters of other similarly situated companies in engagements both in and outside of bankruptcy.

13. Prior to the Petition Date, the Debtor paid KCC a retainer in the amount of \$30,000 (the "Retainer"). Through the Section 156(c) Application, KCC seeks to first apply the Retainer to all prepetition invoices, which Retainer shall be replenished to the original retainer amount, and thereafter, to hold such 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. If appointed as the Claims Agent, KCC will not, without prior order from the Court authorizing KCC to do so, (a) cease providing services during the Chapter 11 Case for any reason, including nonpayment, or (b) undertake any legal representation of the Debtor, nor provide any advices of a legal nature, outside the scope of the duties outlined in the Section 156(c) Application.

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

Executed on March 7, 2021

/s/ Evan Gershbein

Evan Gershbein

Executive Vice President, Corporate Restructuring
Services

*Proposed Claims and Noticing Agent of the Debtor and
Debtor in Possession*

EXHIBIT C
Services Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 19 day of February 2021, between Medley LLC (together with its affiliates and subsidiaries, the “Company”),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 Company 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 Company 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 Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (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 Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

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

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, 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 Company 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 Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company 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 Company 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 Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. 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 or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company 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) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and



KCC AGREEMENT FOR SERVICES

orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the “Retention Order”). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company 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 the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$30,000 (the “Retainer”) that may be held by KCC as security for the Company’s 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 Company 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 Company 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 Company 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 Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Company 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 Company, 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 Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company 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 Company 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 Company 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 Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company 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 Company 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 Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company 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 Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention 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 Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company 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 Company 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 Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company 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 Company for the portion of the particular work which gave rise to the alleged Loss. 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. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

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

D. The Company 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



KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

XI. INDEPENDENT CONTRACTORS

The Company 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	Company
222 N. Pacific Coast Highway, 3rd Floor	Address
El Segundo, CA 90245	City, ST Zip
Attn: Drake D. Foster	Attn:
Tel: (310) 823-9000	Tel:
Fax: (310) 823-9133	Fax:
E-Mail: dfoster@kccllc.com	

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



KCC AGREEMENT FOR SERVICES

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 Company 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 Company and an officer of KCC.

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. 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]



KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC


BY: Evan Gershbein DATE: 2/22/21
TITLE: EVP, Corporate Restructuring Services

Company


BY: Richard Talluto DATE: 2/22/21
TITLE: CFO

EXHIBIT A

Fee Structure



FEE STRUCTURE

Consulting Services & Rates¹

Position

Hourly Rate

Analyst

\$25.50 - \$42.50

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 Consultant²

\$29.75 - \$80.75

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

Consultant/Senior Consultant/Director

\$55.25 - \$165.75

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.

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 Director is the primary contact for the company, counsel and other professionals and oversees and supports the entirety of an engagement. KCC's Directors average over twelve years of experience and are generally former practitioners.

Securities/Solicitation Consultant

\$174.25

The Securities Director/Solicitation 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 Consultant provides support on all voting, tabulation, Schedule and SOFA services and other additional complex consulting tasks.

Securities Director/Solicitation Lead

\$182.75

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 and other additional complex consulting tasks.

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. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

² Certain technology development fees may be applicable.



FEE STRUCTURE

Printing Services & Noticing Services

Printing	\$0.10 per image (volume discounts apply)
Document folding and inserting	Waived
Envelopes	Varies by size
E-mail noticing	Waived ³
Fax noticing	\$0.08 per page
Public Securities Events	Varies by Event
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 ⁴	\$0.10 per record 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

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

³ A set-up fee for email services larger than 100 parties may apply. This set-up fee varies depending on the total number of parties.

⁴ Fee waived up to 10,000 records per month



FEE STRUCTURE

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