

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 35

**CERTIFICATION OF COUNSEL REGARDING ORDER AUTHORIZING
THE DEBTORS TO EMPLOY AND RETAIN KURTZMAN CARSON
CONSULTANTS, LLC DBA VERITA GLOBAL AS CLAIMS AND
NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “**Debtors**”)² hereby certify as follows:

1. On June 17 and 19, 2024 (collectively, the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”).

2. On June 20, 2024, the Debtors filed the *Application of Debtors for Authority to Employ and Retain Kurtzman Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (D.I. 35) (the “**Application**”). Attached as Exhibit D to the Application was a proposed form of order.

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker**” or the “**Company**.”



3. Modifications have been made to the proposed form of order to incorporate certain comments from the Office of the United States Trustee (the “**U.S. Trustee**”).

4. A copy of the revised proposed form of order (the “**Revised Order**”) is attached hereto as **Exhibit A**. For the convenience of the Court and all parties in interest, a redline comparing the Revised Order to the proposed form of order filed with the Application is attached hereto as **Exhibit B**.

5. The U.S. Trustee has reviewed the Revised Order and has no objection to its entry.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Order at its earliest convenience.

Dated: July 2, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Evanthea Hammer

Robert J. Dehney, Sr. (No. 3578)
Andrew R. Remming (No. 5120)
Brenna A. Dolphin (No. 5604)
Sophie Rogers Churchill (No. 6905)
Evanthea Hammer (No. 7061)
1201 N. Market Street, 16th Floor
Wilmington, Delaware 19801
Tel.: (302) 658-9200
rdehney@morrисnichols.com
aremming@morrисnichols.com
bdolphin@morrисnichols.com
srchurchill@morrисnichols.com
ehammer@morrисnichols.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)
Darren S. Klein (admitted *pro hac vice*)
Steven Z. Szanzer (admitted *pro hac vice*)
Richard J. Steinberg (admitted *pro hac vice*)
450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
brian.resnick@davispolk.com
darren.klein@davispolk.com
steven.szanzer@davispolk.com
richard.steinberg@davispolk.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Revised Order

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

In re:

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Debtors.¹

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**ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS, LLC DBA VERITA GLOBAL AS CLAIMS
AND NOTICING AGENT NUNC PRO TUNCTO TO THE PETITION DATE**

Upon the application (the “**Application**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), for entry of an order, pursuant to section 156(c) of title 28 of the United States Code, section 503(b) of the Bankruptcy Code, Bankruptcy Rules 2002(f) and 2016, and Local Rule 2002-1(f), authorizing the Debtors to employ and retain Kurtzman Carson Consultants, LLC dba Verita Global (“**Verita**”) as Claims and Noticing Agent, as more fully described in the Application; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related

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

proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Application and the Gershbein Declaration; and the Court having held a hearing to consider the relief requested in the Application (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Application and the Gershbein Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Application is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Application, if any, having been withdrawn, resolved, or overruled; 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 granted as set forth in this order (this “**Order**”).
2. The Debtors are authorized to employ and retain Verita as Claims and Noticing Agent effective *nunc pro tunc* to the Petition Date in accordance with the terms of the Services Agreement.
3. Verita is authorized to perform the Claims and Noticing Services described in the Application.
4. Verita 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. Verita is authorized and directed, to the extent applicable, to (a) maintain an official Claims Register for each of the

Debtors, (b) provide public access to every proof of claim unless otherwise ordered by the Court, and (c) provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

5. Verita is authorized and directed, to the extent applicable, to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

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

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

8. Verita 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 U.S. Trustee, counsel for the Debtors, and counsel to any official committee appointed in the Chapter 11 Cases.

9. 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.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Verita incurred pursuant to the Services Agreement shall be treated as administrative expenses of the Debtors' estates.

11. Verita shall not be entitled to any late charges under section II(E) of the Services Agreement.

12. Verita will hold its retainer under the Services Agreement during the Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

13. The Debtors shall indemnify Verita under the terms of the Services Agreement, as modified pursuant to this Order.

14. Verita shall not be entitled to indemnification, contribution, or reimbursement under 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 the Court.

15. Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify Verita, or provide contribution or reimbursement to Verita, for any claim or expense that is either (a) judicially determined (the determination having become final and no longer subject to appeal) to have arisen from Verita's bad faith, self-dealing, breach of fiduciary duty (if any), gross negligence, fraud, or willful misconduct, (b) for a contractual dispute in which the Debtors allege breach of Verita's contractual obligations under the Services Agreement, unless the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (c) settled prior to a judicial determination as to the exclusions set forth in clauses (a) and (b) above, but determined by the Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Application or this Order.

16. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases (that order having become a final order no longer subject to appeal) or (b) the entry of an order closing the Chapter 11 Cases, Verita believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, or reimbursement obligations under the Services Agreement (as modified by this Order), including the advancement of defense costs, Verita must file an application therefor in the Chapter 11 Cases, and the Debtors may not pay any such amounts to Verita before the entry of an order by the Court approving the payment. This paragraph 15 is intended only to specify the period of time under which the Court shall have jurisdiction over any request for payment related to indemnification, contribution, or reimbursement. All parties in interest shall retain the right to object to any demand by Verita for indemnification, contribution, or reimbursement.

17. The limitation of liability provision in section IX of the Services Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

18. In the event that Verita is unable to provide the services set forth in this Order or the Services Agreement, Verita shall immediately notify the Clerk and counsel to the Debtors and, upon approval of the 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 counsel to the Debtors.

19. The attorneys' fees provision in section XVII of the Services Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

20. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for additional services that are to be performed by Verita but are not specifically authorized by this Order.

21. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

22. Verita shall not cease providing claims processing services during the Chapter 11 Cases for any reason, including nonpayment, without an order of the Court.

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

24. The Debtors and Verita are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

25. Notwithstanding any term in the Services Agreement to the contrary, the Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

Redline

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Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Application and the Gershbein Declaration; and the Court having held a hearing to consider the relief requested in the Application (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Application and the Gershbein Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Application is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Application, if any, having been withdrawn, resolved, or overruled; 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 granted as set forth in this order (this “**Order**”).
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clauses (a) and (b) above, but determined by the Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Application or this Order.

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