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Proposed Co-Counsel to the Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:)	Chapter 11
ENVIVA INC., <i>et al.</i> ,)	Case No. 24-10453 (BFK)
Debtors. ¹)	(Jointly Administered)
)	
)	

**ORDER AUTHORIZING THE RETENTION AND APPOINTMENT OF
KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT**

Upon the Application² filed by the above-referenced debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Retention Order*”) authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“*KCC*”) as claims and noticing agent (“*Agent*”) in order to assume full responsibility for the distribution of notices and the

¹ Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/enviva. The location of the Debtors’ corporate headquarters is: 7272 Wisconsin Avenue, Suite 1800, Bethesda, MD 20814.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Application.



maintenance, processing and docketing of proofs of claim filed in the Debtors' cases, all as more fully set forth in the Application, the Agent Affidavit, and in the First Day Declarations; and the Court having jurisdiction over the matters raised in the Application pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found based upon the representation made in the Application and the Agent Affidavit that the employment of KCC as Agent is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that and that KCC does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and the Court having found that proper and adequate notice of the Application and hearing thereon has been given and that no other or further notice is necessary; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Application after having given due deliberation upon the Application and all of the proceedings had before the Court in connection with the Application, it is HEREBY ORDERED THAT:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth in this Retention Order.
2. The Debtors are authorized to retain KCC as Agent effective as of the Petition Date, under the terms of the Engagement Agreement, and KCC is authorized and directed to perform

noticing services and to receive, maintain, record and otherwise administer the proofs of claim filed in these cases, and all related tasks, all as described in the Application.

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 these cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court 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 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 set forth in the Application.

6. Notwithstanding anything to the contrary contained in the Engagement Agreement, KCC is not authorized to establish Debtor bank accounts with financial institutions on behalf of the Debtors as debtors in possession.

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

8. 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, if any, monitoring the expenses of the Debtors and any party in interest who specifically requests service of the monthly invoices.

9. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices, and that the parties may seek resolution of the matter from the Court if resolution is not achieved. If an objection has been raised, the Debtors may not pay the objected to amount pending agreement of the parties or entry of an order of this Court authorizing payment. Notwithstanding anything to the contrary contained in the Services Agreement no late charges shall accrue on any invoices.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC as Agent under this Retention Order shall be an administrative expense of the Debtors' estates.

11. KCC may apply its retainer to all pre-petition invoices, which retainer shall be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the Engagement Agreement during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

12. The Debtors shall indemnify KCC under the terms of the Engagement Agreement as modified by this Order.

13. KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the

Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court.

14. Notwithstanding anything to the contrary in the Engagement 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: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Engagement Agreement as modified by this Retention Order.

15. Notwithstanding anything contained in the Application, Declaration, or the Services Agreement to the contrary, any limitation of liability shall be of no force or effect during the chapter 11 cases.

16. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these 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 Engagement Agreement (as modified by this Retention Order), including without limitation the advancement of defense costs, KCC must file an application 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. 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.

17. In the event KCC is unable to provide the services set out in this order, KCC will immediately notify the Clerk and Debtors' attorney and cause to have all original proofs of claim and computer information turned over to another Agent with the advice and consent of the Clerk and Debtors' attorney.

18. The Debtors may submit a separate retention application, pursuant to section 327 of the Bankruptcy Code and/or any applicable law, for work that is to be performed by Agent but is not specifically authorized by this Retention Order.

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

20. Agent shall not cease providing claims processing services during the chapter 11 cases for any reason, including nonpayment, without an order of the Court.

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

22. Notwithstanding the relief granted in this Order, all authorizations herein and all payments and actions pursuant hereto shall be subject to each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and*

(V) *Granting Related Relief*, filed contemporaneously herewith (collectively, such interim and final orders, the “**DIP Order**”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order or the DIP Documents (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order or the DIP Documents and the terms of this Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order or the DIP Documents, as applicable, shall control.

23. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

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

Dated: Mar 14 2024
Alexandria, Virginia

/s/ Brian F Kenney
UNITED STATES BANKRUPTCY JUDGE

Entered On Docket: Mar 14, 2024

WE ASK FOR THIS:

/s/ Jeremy S. Williams

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Peter J. Barrett (VA 46179)

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CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeremy S. Williams