

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11 Case No.
	:	
EXTENDED STAY INC., <u>et al.</u> ,	:	09-13764 (JMP)
	:	
Debtors.	:	
-----X	:	

**ORDER PURSUANT TO 28 U.S.C. § 156(C) AND
LOCAL BANKRUPTCY RULE 5075-1(a) APPROVING THE
RETENTION OF KURTZMAN CARSON CONSULTANTS LLC
AS NOTICE AND CLAIMS AGENT FOR THE DEBTORS**

Upon the application dated June 15, 2009 (the “Application”)¹ of Extended Stay Inc. and its debtor affiliates, as debtors and debtors in possession (the “Debtors”), for an order pursuant to section 156(c) of title 28 of the United States Code and Local Bankruptcy Rule 5075-1(a) authorizing the employment and retention of Kurtzman Carson Consultants LLC (“KCC”) as the Claims Agent to the Debtors, all as more fully set forth in the Application; and upon the Affidavit of Michael J. Frishberg, which is attached to the Application as “Exhibit D,” wherein it appears that KCC does not, by reason of any direct or indirect relationship to, connection with or interest in the Debtors, hold or represent any interest adverse to the Debtors, their estates or any class of creditors or equity interest holders with respect to the matters upon which it is to be engaged, and is not connected with the Debtors, their creditors, other parties-in-interest, or the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”), with respect to the matters upon which KCC is to be engaged; and it appearing that KCC is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code; and the

¹ Capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Application.



Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Referral of Cases to Bankruptcy Judges of the District Court for the Southern District of New York, dated July 19, 1984 (Ward, Acting C.J.); and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the parties listed on “Exhibit 1” attached hereto and those creditors holding the five largest unsecured claims against the Debtors’ estates (on a consolidated basis), and it appearing that no other or further notice need be provided; and the Court having determined that the relief requested in the Application is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Application is granted; and it is further

ORDERED that the Debtors are authorized to retain and employ KCC, effective as of the commencement of these chapter 11 cases, as Claims Agent under the KCC Agreement (as such term is defined in the Application); and it is further

ORDERED that the terms of the KCC Agreement are approved; and it is further

ORDERED that KCC is appointed as the Claims Agent to the Debtors and as the custodian of court records and, as such, is designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors; and it is further

ORDERED that the debtors and KCC are authorized to take such other action as is reasonably necessary to comply with each of their respective duties set forth in the Application and this Order; and it is further;

ORDERED that KCC shall perform the services set forth in the Application and the KCC Agreement; and it is further

ORDERED that the fees and expenses of KCC incurred in performance of the above services are to be treated as administrative expense claims against the Debtors' estates; and it is further

ORDERED that the Debtors are authorized to pay KCC's undisputed fees and expenses as set forth in the KCC Agreement in the ordinary course of business without the necessity of KCC filing fee applications with this Court (without prejudice to the Debtors' right to dispute any such invoices); and it is further

ORDERED that the fees and expenses of KCC incurred in performance of the above services shall be paid by the Debtors in accordance with the KCC Agreement after the tenth (10th) day after each KCC invoice has been received by the Debtors, unless KCC is advised, within that ten-day period, that the Debtors object to the invoice, in which case the Debtors will schedule a hearing before the Court to consider the disputed invoice. In such case, the Debtors shall remit to KCC only the undisputed portion of the invoice and, if applicable, shall pay the remainder to KCC upon the resolution of the dispute, as mandated by this Court. Notwithstanding the foregoing, KCC may require prepayment from the Debtors under certain circumstances as set forth in the KCC Agreement; and it is further

ORDERED that, in accordance with the Claims Agent Protocol, KCC shall (i) maintain records of all services, which will show dates, categories of services, fees charged, and

expenses incurred; and (ii) serve its monthly invoices on the U.S. Trustee, any Official Committee of Unsecured Creditors appointed in these cases, and any party-in-interest who requests service of KCC's monthly invoices; and it is further

ORDERED that KCC will comply with all requests of the Office of the Clerk of the Bankruptcy Court (the "Clerk") and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and it is further

ORDERED that, in the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and Debtors' counsel and cause to have all original proofs of claim and computer information turned over to another claims agent with the advice and consent of the Clerk and Debtors' counsel; and it is further

ORDERED that, if these cases convert to cases under chapter 7 of the Bankruptcy Code, upon consent of the chapter 7 trustee, KCC will continue to be paid for its services until the claims filed in these cases have been completely processed; provided, further, that if claims agent representation is necessary in the converted chapter 7 case, KCC will continue to be paid in accordance with 28 U.S.C. § 156(c) under the terms set out in the KCC Agreement and this Order; and it is further

ORDERED that, notwithstanding the possible applicability of Rules 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that notice of the Application as provided therein shall be deemed good and sufficient notice of such Application; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

Dated: New York, New York
June 16, 2009

s/ James M. Peck
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

<p>The Office of the United States Trustee for the Southern District of New York</p> <p>33 Whitehall Street, 21st Floor, New York New York 10004 Attn: Paul Schwartzburg, Esq.</p>	<p>Counsel to the Supporting Certificate Holders</p> <p>Fried Frank Harris Shriver & Jacobson LLP One New York Plaza, New York, New York 10004 Attn: Brad Eric Scheler, Esq. Jennifer Rodburg, Esq.</p>
<p>Counsel to the Ad Hoc Mezzanine Lender Group</p> <p>Cleary, Gottlieb, Steen & Hamilton One Liberty Plaza 37th Floor New York, NY 10006 Attn: Michael Weinberger, Esq.</p>	<p>- and-</p> <p>Counsel to Cerberus Capital Management, L.P.</p> <p>Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022 Attn: Adam Harris, Esq.</p>
<p>Counsel to Wachovia Bank National Association, the Agent under the Mortgage Loan Agreement and the Mezzanine Loan Agreements</p> <p>Morrison & Foerster L.L.P. 1290 Avenue of the Americas New York, N.Y. 10104-0050 Attn: Jeffrey Temple, Esq.</p>	<p>Counsel to the Ad Hoc Mezzanine Lender Group</p> <p>Kaye Scholer LLP 425 Park Avenue, New York, New York 10022 Attn: Jeannie Bionda, Esq. and Louis Hait, Esq.</p>
<p>Trustee under the Trust and Servicing Agreement</p> <p>Wells Fargo Corporate Trust Services MAC N2702-011 9062 Old Annapolis Road Columbia, MD 21045 Attn: Elizabeth A. Brewster, Vice President</p>	<p>Counsel to Fortress Investment Group L.L.C.</p> <p>Sidley Austin L.L.P. 787 Seventh Avenue New York, New York 10019 Attn: Robert L. Golub, Esq.</p>
<p>Servicer under the Trust and Servicing Agreement</p> <p>Wachovia Securities 201 South College Street NC1075 Charlotte, NC 28288 Attn: Mike Benner</p>	<p>Counsel to the Servicer under the Trust and Servicing Agreement</p> <p>Seyfarth Shaw LLP 620 Eighth Avenue, New York, NY 10018 Attn: Mitchell Kaplan, Esq.</p>