



**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re

**MARK W. LEBENS,**

Debtor.

Case No. 2:11-bk-19111-RK

Chapter 11

**SEPARATE STATEMENT OF DECISION  
ON DEBTOR'S OBJECTIONS TO FINAL  
FEE APPLICATIONS OF  
PROFESSIONALS OF THE ESTATE**

**PROCEDURAL HISTORY**

The contested matters of the second and final fee applications of the Law Offices of Steven R. Fox ("LOS RF"), counsel for debtor-in possession, and Howard Fox, C.P.A. ("CPA"), accountant for debtor-in-possession, were tried before the undersigned United States Bankruptcy Judge on September 27 and October 25, 2012. Steven R. Fox ("Attorney Fox") represented himself and Howard Fox. Howard Fox also appeared on his own behalf. Mark Lebens, debtor, represented himself.

The court has heard and considered the testimony of the witnesses who testified at trial and the oral arguments of the parties made at trial, and the court has read and considered the documents received as exhibits at trial as well as the written arguments made by the parties and the other papers and pleadings filed in the case. The court has also reviewed and considered the proposed findings of fact and conclusions of law

1 submitted by the parties after trial on November 9, 2012 and December 11, 2012 as well  
2 as the objections made thereto on December 20, 2012.

3 On May 22, 2012, LOSRF and CPA filed the second and final fee applications and  
4 noticed the fee applications for hearing on June 12, 2012. LOSRF seeks approval of an  
5 award totaling \$55,692.21 for professional fees and costs (\$51,257.98 in fees and  
6 \$4,434.23 in costs) for the period from December 24, 2011 through May 16, 2011.  
7 LOSRF also seeks approval on a final basis professional fees and costs totaling  
8 \$158,327.24 (\$148,025.25 in fees and \$10,301.99 in costs) previously approved on an  
9 interim basis by orders entered on March 7 and 19, 2012.

10 CPA seeks approval of an award of \$5,500.00 for professional fees for the period  
11 from January 1, 2012 through May 16, 2011. CPA also seeks approval on a final basis  
12 professional fees of \$21,062.50 previously approved on an interim basis by an order  
13 entered on March 7, 2012.

14 On May 30, 2012, Attorney Fox filed a declaration stating that he and debtor had  
15 met and discussed the fee applications, that there were disagreements over the fees for  
16 the fee applications and that debtor declined to support the fee applications. On May 30,  
17 2012, debtor filed two declarations in dispute of the fee applications stating that fee  
18 applications are so high that they jeopardize the approved plan and said that he "is  
19 seeking fair and equitable treatment from the Court and the U.S. Trustee in the  
20 successful conclusion of Court awarded fees."

21 At the hearing on June 12, 2012, in light of debtor's objections to the fee  
22 applications, the court stated it considered the objections to the fee applications to be  
23 contested matters and ordered that the matters be set for an evidentiary hearing.

24 The court conducted the evidentiary hearing on September 27 and October 25,  
25 2012. At the evidentiary hearing, debtor orally stated his grounds for objection through  
26 oral argument and testimony. The court ordered the parties to submit proposed findings  
27 of fact and conclusions of law after the evidentiary hearing and allowed the parties to  
28

1 interpose objections to the same. The court set a further hearing for February 5, 2013,  
2 which has been continued to March 5, 2013 and April 9, 2013.

3 In his proposed findings of fact and conclusions of law, debtor further stated his  
4 grounds for objection to the fee applications. The court has separately adopted findings  
5 of fact and conclusions of law which have been reviewed, modified and filed concurrently  
6 herewith.

### 7 ANALYSIS

8 The court evaluates the fee applications under 11 U.S.C. § 330(a)(1), which  
9 authorizes the court to award to a professionals employed under 11 U.S.C. §327(a)  
10 “reasonable compensation for actual, necessary services” rendered by the professionals  
11 and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) and (B);  
12 *see also, Ferrette & Slater v. United States Trustee (In re Garcia)*, 335 B.R. 717, 723-724  
13 (9<sup>th</sup> Cir. BAP 2005). “[A] professional need demonstrate only that the services were  
14 reasonably likely to benefit the estate at the time rendered.” *In re Garcia*, 335 B.R. at  
15 724, *citing Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*,  
16 251 B.R. 103, 106 (9<sup>th</sup> Cir. BAP 2000). This authority includes the discretion, upon  
17 motion or *sua sponte*, to “award compensation that is less than the amount” requested.  
18 *Id.* §330(a)(2) (emphasis added); *see Law Offices of David A. Boone v. Derham-Burk (In*  
19 *re Eliapo)*, 468 F.3d 592, 597 (9th Cir. 2006).

20 Section 330(a)(3) directs the court to assess “the nature, the extent, and the value”  
21 of the professional services provided when determining the amount of reasonable  
22 compensation to award, taking into consideration “all relevant factors,” including:

23 (A) the time spent on such services;

24 (B) the rates charged for such services;

25 (C) whether the services were necessary to the administration of, or beneficial at  
26 the time at which the service was rendered toward the completion of, a case under  
27 this title;

28 (D) whether the services were performed within a reasonable amount of time

1 commensurate with the complexity, importance, and nature of the problem, issue,  
2 or task addressed; and

3 (E) whether the compensation is reasonable based on the customary  
4 compensation charged by comparably skilled practitioners in cases other than  
5 cases under [title 11].

6 11 U.S.C. §330(a)(3)(A)-(E); *see also, In re Garcia*, 335 B.R. at 723-724.

7 However, Section 330(a)(4)(A) also provides:

8 . . . the court shall not allow compensation for-

9 (i) unnecessary duplication of services; or

10 (ii) services that were not-

11 (I) reasonably likely to benefit the debtor's estate; or

12 (II) necessary to the administration of the case.

13 11 U.S.C. § 330(a)(4)(A); *see also, In re Garcia*, 339 B.R. at 724.

14 As the Bankruptcy Appellate Panel of the Ninth Circuit stated in *Garcia* and  
15 *Mednet*, "in addition, a bankruptcy court examines the circumstances and manner in  
16 which services are performed and results achieved to determine a reasonable fee. *In re*  
17 *Garcia*, 335 B.R. at 724, *citing In re Mednet*, 251 B.R. at 106. According to the BAP,  
18 such examination includes:

19 (a) Were the services authorized?

20 (b) Were the services necessary or beneficial to the administration of the estate at  
21 the time they were rendered?

22 (c) Are the services adequately documented?

23 (d) Are the fees required reasonable, taking into consideration the factors set forth  
24 in section 330(a)(3)?

25 (e) In making the determination, the court must consider whether the professional  
26 exercised reasonable billing judgment.

27 *Id.*; *see also, Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d  
28 955, 957-959 (9<sup>th</sup> Cir. 1991).

1 As to exercising reasonable billing judgment, the BAP stated in *Garcia*, the  
2 professional must consider:

3 (a) Is the burden of the probable cost of legal services disproportionately large in  
4 relation to the size of the estate and maximum probable recovery?

5 (b) To what extent will the estate suffer if the services are not rendered?

6 (c) To what extent may the estate benefit if the services are rendered and what is  
7 the likelihood of the disputed issues being resolved successfully?

8 *In re Garcia*, 335 B.R. at 724, citing *In re Mednet*, 251 B.R. at 108 n. 7, citing to,  
9 *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 959 (9<sup>th</sup>  
10 Cir. 1991).

11 Based on the foregoing, the court separately reviews the fee applications of the  
12 professionals, first, LOSRF, and then, the CPA.

13 **1. Fee Application of Law Offices of Steven R. Fox**

14 First, the court examines whether the services of the professional, LOSRF, were  
15 authorized. The answer is yes as the court approved by order entered on May 6, 2011  
16 LOSRF's application for employment as general bankruptcy counsel for debtor-in-  
17 possession pursuant to Section 327 of the Bankruptcy Code, 11 U.S.C.

18 Debtor objects to the fee application of LOSRF as lacking authorization because  
19 the firm collected fees without signing a written fee retainer agreement in advance in  
20 violation of California Business and Professions Code, § 6148. The court finds that this  
21 objection lacks merit because the parties signed a written fee retainer agreement dated  
22 February 28, 2011 regarding the provision of professional services by LOSRF, which  
23 covered the services rendered on or after March 3, 2011, which are the subject of the  
24 final fee application. Debtor also asserts that he was "under duress" when he signed the  
25 fee retainer agreement, but the circumstances of the parties' agreement for LOSRF to  
26 handle his bankruptcy case as evidenced by the record do not indicate duress or  
27 compulsion. Debtor sought LOSRF's professional services based on the  
28 recommendation of an acquaintance, and after the initial consultation, he voluntarily

1 agreed to retain LOSRF to handle his bankruptcy case.

2 Debtor cites no authority that the fees are not payable for professional services  
3 rendered because of a technical violation of Business & Professions Code Section 6148  
4 if the fees are collected before a formal fee retainer agreement is signed. As indicated in  
5 the final fee application, LOSRF collected \$45,000 as a retainer prepetition, including  
6 payment of the Chapter 11 filing fee for the bankruptcy case, and it is not disputed that  
7 this retainer was paid by debtor and collected by LOSRF before the formal retainer  
8 agreement was signed on February 28, 2011. Second and Final Fee Application of  
9 LOSRF at 11. According to LOSRF in the second and final fee application, \$25,295 was  
10 the remaining retainer amount at the commencement of the bankruptcy case after  
11 application of the retainer for fees billed prepetition and the Chapter 11 filing fee. *Id.*  
12 Even so, the court notes that the fees claimed in the fee application were for services  
13 were rendered after the fee retainer agreement was signed or about February 28, 2011  
14 as indicated by the billing entries for services rendered between March 3, 2011 and  
15 December 23, 2011 and that LOSRF would otherwise have a proper claim for fees for  
16 professional services rendered based on *quantum meruit* principles. See California  
17 Business & Professions Code, § 6148(c).

18 Second, the court next inquires whether the services necessary or beneficial to the  
19 administration of the estate at the time they were rendered. As discussed herein, the  
20 court finds that the services of LOSRF were necessary and/or beneficial to the  
21 administration of the estate at the time they were rendered. The services resulted in the  
22 confirmation of the plan of reorganization of the debtor-in-possession, which incorporated  
23 the stripdown of existing liens on debtor's numerous investment properties to market  
24 values over the objections of creditors.

25 Third, the court examines whether the services adequately documented. The  
26 court has reviewed the entries on the billing statements attached to the Fox Declaration,  
27 which describe the services rendered by LOSRF, as well as the fee applications  
28 themselves. The court finds that LOSRF's services are adequately documented as

1 shown by the detailed billing statements attached to its fee applications, which  
2 satisfactorily explain the services rendered.

3 Fourth, the court considers whether the fees required reasonable, taking into  
4 consideration the factors set forth in section 330(a)(3). As discussed above, the court  
5 considers the specific factors of Section 330(a)(3)(A)-(E): (A) the time spent on such  
6 services; (B) the rates charged for such services; (C) whether the services were  
7 necessary to the administration of, or beneficial at the time at which the service was  
8 rendered toward the completion of, a case under this title; (D) whether the services were  
9 performed within a reasonable amount of time commensurate with the complexity,  
10 importance, and nature of the problem, issue, or task addressed; and (E) whether the  
11 compensation is reasonable based on the customary compensation charged by  
12 comparably skilled practitioners in cases other than cases under [title 11]. *In re Garcia*,  
13 335 B.R. at 724.

14 As recently noted by the Supreme Court in *Purdue v. Kenny A.*, 559 U.S. 542, 130  
15 S.Ct. 1662 (2010), “[A] reasonable attorney’s fee is one is adequate to attract competent  
16 counsel, but that does not produce windfalls to attorneys.” 130 S.Ct. at 1672, *citing Blum*  
17 *v. Stetson*, 465 U.S. 886, 897 (1984). In the Ninth Circuit, the customary method used to  
18 determine a reasonable fee in bankruptcy cases is to calculate the lodestar. *In re Eliapo*,  
19 468 F.3d at 598; *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th  
20 Cir. 1983); *In re Parreira*, 464 B.R. 410, 416 (Bankr. E.D. Cal. 2012). A court computes  
21 the lodestar by multiplying the number of hours reasonably expended by a reasonable  
22 hourly rate. *In re Yermakov*, 718 F.2d at 1471; *see also, Hensley v. Eckerhart*, 461 U.S.  
23 424, 433 (1983) (reasoning that the lodestar “calculation provides an objective basis on  
24 which to make an initial estimate of the value of a lawyer’s services”).

25 Once the lodestar is established, there is a strong presumption that the lodestar  
26 figure represents a reasonable fee. *In re Parreira*, 464 B.R. at 416, *citing In re Manoa*  
27 *Fin. Corp.*, 853 F.3d 687, 691 (9th Cir. 1988). However, a court is permitted to adjust the  
28 lodestar up or down using a “multiplier” based on the criteria listed in § 330 and its

1 considerations of the *Kerr*<sup>1</sup> factors not subsumed within the initial calculation of the  
2 lodestar. See, e.g., *Blum v. Stenson*, 465 U.S. at 898-901 (reversing an upward multiplier  
3 based on factors subsumed in the lodestar determination); *Dang v. Cross*, 422 F.3d 800,  
4 812 (9th Cir. 2005) (observing that a court, in its discretion, may “adjust the lodestar  
5 amount after considering other factors that bear on the reasonableness of the fee”); *In re*  
6 *Parriera*, 464 B.R. at 417. As noted earlier, Section 330(a)(3) lists specific factors for the  
7 court to consider in determining reasonableness of fees, including time spent, rates  
8 charged, necessity and benefit of the services, reasonableness of the time spent  
9 compared with task complexity, importance, and nature, and customary rates of  
10 comparably skilled practitioners in nonbankruptcy cases. *In re Garcia*, 335 B.R. at 724.  
11 Section 330(a)(4)(A) also prohibits the bankruptcy court from allowing compensation for  
12 unnecessary duplication of services, and services that were not either reasonably likely to  
13 benefit the debtor’s estate nor necessary to its proper administration. 11 U.S.C.  
14 §330(a)(4)(A). Likewise, hours not reasonably expended because they are “excessive,  
15 redundant, or otherwise unnecessary” must be excluded from the lodestar amount.  
16 *Hensley v. Eckerhart*, 461 U.S. at 434; *Dawson v. Washington Mutual Bank, F.A. (In re*  
17 *Dawson)*, 390 F.3d 1139, 1152 (9<sup>th</sup> Cir. 2004) (citation omitted).

18 The court should first determine whether the hourly rates claimed by LOSRF are  
19 reasonable. The blended hourly rate for the attorneys and legal staff of LOSRF is  
20 \$288.86. This is calculated by dividing the total fee request of \$199,282.83 (fees claimed  
21 on first fee application of \$148,025.25 based on 528.65 hours worked, plus fees claimed

---

22 <sup>1</sup> The original twelve *Kerr* factors were:

- 23 (1) the time and labor required, (2) the novelty and difficulty of the questions involved,  
24 (3) the skill requisite to perform the legal service properly, (4) the preclusion of other  
25 employment by the attorney due to acceptance of the case, (5) the customary fee,  
26 (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or  
27 the circumstances, (8) the amount involved and the results obtained, (9) the  
experience, reputation, and ability of the attorneys, (10) the “undesirability” of the  
case, (11) the nature and length of the professional relationship with the client, and  
(12) awards in similar cases.

28 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).



1 on second fee application of \$51,257.58 based on 161.25 hours worked) by the number  
2 of stated hours worked – 689.9 (528.65 hours from first fee application, plus 161.25 hours  
3 from second fee application). *Trial Declaration of Steven R. Fox* and *Trial Exhibit 51*,  
4 *Second Fee Application*. The range of hourly rates is from \$120 for paralegal time to  
5 \$400 for the principal of the law firm. *Id.* The hourly rates and the blended hourly rate  
6 are generally reasonable in light of the work involved, but as discussed below, the court  
7 finds that some consideration should be given to the varying levels of experience of the  
8 professionals at LOSRF who rendered services in this case.

9       Next, the court must address whether the number of hours expended is  
10 reasonable. After a careful review of the billing records submitted by LOSRF, the court  
11 finds that the number of hours billed in this case be generally reasonable, except for  
12 some instances which were excessive, redundant or unnecessary under the  
13 circumstances as discussed herein. Generally, a bankruptcy court has broad discretion  
14 to determine the number of hours reasonably expended. “[E]ven where evidence  
15 supports [that] a particular number of hours [were] worked, the court may give credit for  
16 fewer hours if the time claimed is ‘excessive, redundant, or otherwise unnecessary.’” *In*  
17 *re Dawson*, 390 F.3d at 1152 (citation omitted). “The Court will determine what is the  
18 reasonable amount of time an attorney should have to spend on a given project.” *In re*  
19 *Pettibone Corp.*, 74 B.R. 293, 306 (Bankr. N.D. Ill. 1987), *citing*, *In re Shades of Beauty*,  
20 *Inc.*, 56 B.R. 946, 951 (Bankr. E.D.N.Y. 1986). “Without such a determination, for  
21 example, a slow attorney could earn more than the skillful, efficient practitioner solely due  
22 to the additional time he or she needs to obtain the same result.” *Id.* “An attorney should  
23 not be rewarded for inefficiency.” *Id.*

24       After considering the evidence at trial, the court finds that the tasks performed by  
25 LOSRF as attorneys for debtor-in-possession to be relatively difficult and complex. The  
26 tasks required in this representation were to file and prosecute a voluntary case under  
27 Chapter 11 of the Bankruptcy Code, the business bankruptcy chapter of the Bankruptcy  
28 Code, for an individual debtor who owned numerous parcels of investment real property

1 and to confirm a plan of reorganization which contemplated the stripping down of existing  
2 liens on the properties to current market values for which opposition from the affected lien  
3 creditors was likely because the plan of reorganization would partially or totally strip liens  
4 of some secured creditors and reduce interest rates on remaining secured indebtedness  
5 while having to meet the plan confirmation standards of the Bankruptcy Code under 11  
6 U.S.C. § 1129. Successfully confirming a plan of reorganization in this case required lien  
7 valuation and avoidance litigation against secured creditors on most of debtor's  
8 numerous properties, including his principal residence and investment properties, and  
9 was only made possible through extensive and protracted negotiations over property  
10 valuation and interest rates with the secured creditors holding liens on the properties.

11 One of the debtor's objections to LOSRF's fee application is that the number of  
12 hours expended was not reasonable. The court has considered and now addresses this  
13 and other objections of the debtor to the fee applications.

14 Debtor contends that he and the professionals agreed to a "soft cap" of \$80,000  
15 for all professional fees to handle his bankruptcy case. Having heard the testimony of the  
16 witnesses at trial and considered the written evidence, the court finds that there was no  
17 agreement to a fee cap. The parties had signed written fee agreements which provided  
18 for payment for professional services based on hourly fee rates and did not expressly  
19 provide for any ceiling on professional fees. While debtor may have expected that the  
20 budget for professional fees to handle this case would not exceed \$80,000, the  
21 professionals did not so agree, and the professionals did not commit to a fee cap. A cap  
22 on their fees after the fact would be unfair to them because they relied upon the express  
23 terms of the written fee agreements that they would be compensated based on their time.  
24 In this regard, the court finds that the testimony of Attorney Fox to be credible that there  
25 was no agreement to cap professional fees, and his testimony is corroborated by the  
26 express terms of the written fee agreement between LOSRF and debtor signed by the  
27 parties.

28 Debtor contends that the hours spent by LOSRF were unreasonable. Specifically,

1 debtor contends that the time billed by Attorney Park, LOSRF's associate attorney, for  
2 negotiating with debtor's mortgage lenders was unreasonable. Debtor argues that the  
3 time spent by Attorney Park is excessive. While the court does not entirely agree with  
4 Debtor's objections, the court finds that to some extent, debtor's objections have merit.  
5 The court notes that Attorney Park at the time the services were rendered was a new  
6 attorney in his first months of law practice. The time period in which the services were  
7 rendered by Attorney Park were within the first year or so of the date he first became a  
8 lawyer upon his admission to the State Bar of California in December 2010. The court  
9 has reviewed Attorney Park's hours billed as reflected on the billing entries for his  
10 services, and the court has the distinct impression that the tasks took him longer not just  
11 as someone new to bankruptcy practice, but to law practice in general than a seasoned  
12 bankruptcy lawyer like Attorney Fox, who has been practicing bankruptcy law since 1988.  
13 While Attorney Park will probably be a skillful, efficient attorney in the future, his lack of  
14 experience showed in the time records reflecting his time spent on the case, in this  
15 court's opinion, as discussed below. This case must have been the first, or one of the  
16 first, Chapter 11 business bankruptcy cases that Attorney Park has worked on since the  
17 time records show his working on the case when it was filed on March 4, 2011, within  
18 four months of his admission to the bar.

19 Although this undersigned United States Bankruptcy Judge took over the case in  
20 February 2012 after the original assigned judge, the Honorable Ellen Carroll, retired, this  
21 court is thoroughly familiar with the proceedings in this case, having presided over and  
22 ruled upon the confirmation of debtor's plan of reorganization and consideration of the  
23 first fee applications of LOSRF and CPA, having reviewed most of the pleadings and  
24 papers filed in this case, which are part of the evidentiary record as they were submitted  
25 as trial exhibits by applicants, LOSRF and CPA, and having heard the testimony of the  
26 witnesses at trial, including Attorneys Fox and Park, Accountant Fox and debtor. "The  
27 Bankruptcy Judge should be familiar with fees charged in the legal profession, and  
28 experienced at evaluating the quality of legal work and the difficulty and complexity of

1 legal issues as well as the appropriate amount of time billed for various legal tasks.” *In re*  
2 *Pettibone Corp.*, 74 B.R. at 306, *citing*, *In re Liberal Market, Inc.*, 24 B.R. 653, 657  
3 (Bankr. S.D. Ohio 1982). “The Court may consider its own knowledge and experience  
4 concerning reasonable and proper fees and may form an independent judgment as to  
5 value.” *Id.*, *citing*, *In re WHET, Inc.*, 61 B.R. 709, 713 (Bankr. D. Mass. 1986). Having  
6 considered this evidentiary record, the court finds that some of the time billed is  
7 excessive or unnecessary because it took longer for Attorney Park to complete the  
8 services than an experienced attorney, who is expected to be both skillful and efficient.  
9 *Id.*, *citing*, *In re Shades of Beauty, Inc.*, 56 B.R. at 951.

10 The issue of billing judgment regarding work of less experienced associate  
11 attorneys has been described by Professor Nancy Rapoport in her law review article,  
12 “Rethinking Professional Fees in Chapter 11 Cases,” 5 *Journal of Business & Technology*  
13 *Law* 263, 277 and n. 63 (2010). Professor Rapoport explains:

14 In much of the non-bankruptcy world, a client might review a bill with a  
15 first-year (or mid-level) associate checking a docket weekly for entries and  
16 have, as we say down in East Texas, a hissy fit; why would someone  
17 billing \$300/hour need to check the docket when a paralegal can do it for  
half the cost? That client would pick up the phone, call up the billing  
partner, and ask for a discount on that month’s bill.

18 *Id.* While it is true as Abraham Lincoln once said, “A lawyer’s time and advice are his  
19 stock in trade” (see [http://thinkexist.com/quotation/a\\_lawyer-s\\_time\\_and\\_](http://thinkexist.com/quotation/a_lawyer-s_time_and_advice_are_his_stock_in/162359.html)  
20 [advice\\_are\\_his\\_stock\\_in/162359.html](http://thinkexist.com/quotation/a_lawyer-s_time_and_advice_are_his_stock_in/162359.html)) and generally speaking, when time is required to  
21 perform the legal services needed for the client, a new attorney is generally not as  
22 efficient as an experienced practitioner. *Id.* at 278. Professor Rapoport comments on  
23 the logic of a client working with a more experienced law partner and a less experienced  
24 associate attorney:

25 [A client] may be inclined to think that the [law firm] partners, who can draft  
26 more quickly, will be more efficient at drafting that [legal] memo. Maybe  
27 that’s true; sometimes, it’s certainly true. For most memos, though,  
28 pushing the drafting work down to lower-billing associates (and then  
writing down the excess time spent on the draft) will save the client  
money. That last point—writing down the excess time so that the client

1 doesn't have to foot the bill for waste—is something that doesn't happen  
2 as often as it used to.

3 *Id.*

4 LOSRF wrote down very little time with respect to Attorney Park and his lack of  
5 experience. *Id.* at 278 n. 65 (“Writing down’ means to determine that the client will not  
6 have to pay for certain billable work because the billing partner has zeroed out that part  
7 of the bill. This zeroing out of wasteful billing is considered ‘billing judgment,’ and it’s in  
8 shorter supply than it used to be.”) While Attorney Park was supervised by an  
9 experienced attorney, Attorney Fox, Attorney Park performed the bulk of the services  
10 rendered in this case. The little time that LOSRF wrote down for the case was for  
11 meetings involving multiple attorneys since the retainer agreement provided that only one  
12 professional would be billed if more than one attended a meeting (i.e., Attorney Fox and  
13 Attorney Park conferring among themselves or both attending meetings with third parties  
14 and for an attorney performing paralegal or secretarial functions (i.e., Attorney Park  
15 helping out in physically serving pleadings). LOSRF did, however, write off a small  
16 amount of time for Attorney Park’s services, noting not all of hours devoted to a task were  
17 billed, but in this court’s view, such writeoffs were too few and insufficient as discussed  
18 herein.

19 However, reviewing the time entries and the work product of Attorney Park  
20 demonstrates to the court that Attorney Park took excessive time in completing and billing  
21 for routine tasks in drafting and redrafting the plan disclosure statement and preparing  
22 charts for the disclosure statements, really a paralegal or secretarial task, which warrants  
23 partial disallowance of fees as excessive. LOSRF billed debtor 299.60 hours for  
24 preparing the disclosure statement, of which 16.70 hours (representing \$4,445) was not  
25 charged, leaving a net amount claimed as due of \$89,920.<sup>2</sup>

26  
27 <sup>2</sup> The court also notes a category called “Litigation” billed for 8.50 hours with an amount claimed due of  
28 \$2,125 with the explanation, “No litigation was handled in this case. This category became a catch all

1 LOSRF claims 0.5 hour by Attorney Park for researching procedures for recording  
2 bankruptcy petitions with Los Angeles and Kern County Recorders (0.5 hour on 3/18/11).  
3 The court finds that the claimed time is excessive because knowledge of such  
4 procedures is basic and should not be charged for by a brand new attorney who is  
5 unfamiliar with this basic knowledge. The court will allow no fees for this billed time as  
6 reasonable (resulting in a reduction of \$125.00 in fees).

7 LOSRF claims 3.5 hours by Attorney Park for researching service addresses for  
8 creditors (1.5 hours on 3/17/11 and 2.0 hours on 3/18/11). The court finds that the  
9 claimed time is excessive because a higher cost attorney is conducting this nonlegal  
10 research task rather than a lower cost experienced paralegal or legal assistant. The court  
11 will allow 1.0 hour of administrative time at a legal assistant rate of \$125 per hour as  
12 reasonable (resulting in a reduction of \$750.00 in fees).

13 LOSRF claims 1.0 hour by Attorney Park for researching service addresses for  
14 contested proceeding (1.0 hour on 3/21/11). The court finds that the claimed time is  
15 excessive because a higher cost attorney is conducting this nonlegal research task rather  
16 than a lower cost paralegal or legal assistant. The court will allow 1.0 hour of  
17 administrative time at a legal assistant rate of \$125 per hour as reasonable (resulting in a  
18 reduction of \$125.00 in fees).

19 LOSRF claims 0.5 hour by Attorney Park for preparing a notice of change of date  
20 and time for the meeting of creditors (0.5 hour on 3/23/11). The court finds that the  
21 claimed time is excessive because a higher cost attorney is conducting this nonlegal  
22 word processing task rather than a lower cost paralegal or legal assistant. The court will  
23 allow 0.5 hour of administrative time at a legal assistant rate of \$125 per hour as  
24 reasonable (resulting in a reduction of \$62.50 in fees).

25 LOSRF claims 84.9 hours by Attorney Park for researching lienstripping and  
26 category. Second and Final Fee Application of LOSRF at 8. This category is perhaps notable because it  
27 denotes that this was ultimately an uncontested Chapter 11 case.  
28

1 drafting motions to avoid liens on debtor's principal residence and investment properties  
2 (2.5 hours on 3/15/11, 0.6 hour on 3/16/11, 1.9 hours on 3/17/11, 2.0 hours on 3/23/11,  
3 2.8 hours on 3/24/11, 1.0 hour on 3/30/11, 1.0 hour on 3/31/11, 1.0 hour on 4/8/11, 1.2  
4 hours on 4/12/11, 1.2 hours on 4/14/11, 1.0 hour on 4/15/11, 1.5 hours on 4/18/11, 0.9  
5 hour on 4/20/11, 3.2 hours on 4/21/11, 2.0 hours on 4/22/11 (3.5 hours devoted), 2.5  
6 hours on 4/25/11 (6.5 hours devoted), 4.5 hours on 5/3/11, 1.5 hours on 5/6/11, 1.5 hours  
7 on 5/10/11, 5.5 hours on 5/11/11, 8.5 hours on 5/12/11, 8.0 hours on 5/13/11, 3.5 hours  
8 on 5/16/11, 2.0 hours on 5/17/11, 1.0 hour on 5/18/11, 1.0 hour on 5/19/11, 1.5 hours on  
9 5/20/11, 2.5 hours on 5/27/11, 10.2 hours on 5/27/11, 1.5 hours on 5/31/11, 0.1 hour on  
10 5/31/11, 2.0 hours on 5/31/11, 0.8 hour on 6/8/11). The court finds that the claimed time  
11 is excessive because based on the court's review of the lien avoidance motions, the  
12 tasks to draft the motions based on minimal legal citations and presenting simple  
13 valuation issues did not warrant the time claimed. Although the number of motions is  
14 relatively large, the motions were simple, repetitive, and generally uncontested. The  
15 court will allow 35.0 hours of attorney time as reasonable (resulting in a reduction of  
16 \$12,475 in fees).

17 LOSRF claims 4.3 hours by Attorney Park for drafting the status report filed on  
18 4/14/11 (1.0 hours on 4/13/11, 3.3 hours on 4/14/11) and 1.2 hours by Attorney Fox (1.0  
19 hour on 4/12/11 and 0.2 hour on 4/13/11). The court finds that the claimed time is  
20 excessive because based on the court's review of the status report, the task to prepare  
21 the status report did not warrant the time claimed. The court will allow 2.0 hours of  
22 attorney time by Attorney Park and 1.2 hours by Attorney Fox as reasonable (resulting in  
23 a reduction of \$575.00 in fees).

24 LOSRF claims 7.5 hours by Attorney Park for drafting the application for extension  
25 of deadline to submit proposed plan and disclosure statement and proposed order  
26 thereon (1.0 hour on 6/22/11, 0.8 hour on 6/23/11, 2.0 hours on 6/24/11, 1.5 hour on  
27 6/27/11, 0.5 hour on 6/27/11, 0.9 hour on 7/12/11, 0.8 hour on 7/13/11). The court finds  
28 that the claimed time is excessive because this was a routine, straightforward application

1 and order which should be based on standardized form pleadings that did not warrant the  
2 time claimed and for performing nonlegal administrative tasks of service of application.  
3 The court will allow 2.0 hours of attorney time as reasonable (resulting in a reduction of  
4 \$1,375.00 in fees).

5 LOSRF claims 1.1 hours by Attorney Park for legal research on 11 U.S.C. § 1129  
6 (0.7 hour on 6/7/11, 0.4 hour on 6/16/11,) and 2.1 hours by Attorney Fox (2.1 hours on  
7 8/5/11). The court finds that the claimed time is excessive because there is no  
8 explanation of why the plan confirmation statute was needed to be researched since  
9 business bankruptcy counsel should be generally familiar with the requirements of that  
10 statute. The court will allow 1.0 hour of attorney time by Attorney Fox for this research  
11 as reasonable (resulting in a reduction of \$715.00 in fees).

12 LOSRF claims 5.5 hours by Attorney Park for legal research on classification of  
13 claims (1.0 hour on 6/10/11, 1.0 hour on 6/13/11, 1.5 hours on 6/14/11, 0.5 hour on  
14 6/28/11) and on claim classification and interest rates (1.5 hours on 6/27/11 and 1.0 hour  
15 on 6/28/11). The court finds that the claimed time is excessive because there is no  
16 explanation in the fee applications of why these subjects were researched and what legal  
17 issues were presented. The primary issue in this case related to treatment of the  
18 secured claims relating to debtor's real estate investments. The court will allow 1.0 hour  
19 of attorney time for this research as reasonable (resulting in a reduction of \$1,125.00 in  
20 fees).

21 LOSRF claims 6.7 hours by Attorney Park for legal research on the Antelope  
22 Valley economic conditions and its real estate market (1.5 hours on 5/14/11, 1.5 hours on  
23 6/14/11, 0.8 hour on 6/15/11, 1.5 hours on 6/22/11, 0.9 hour on 6/23/11, 0.5 hour on  
24 6/28/11) The court finds that the claimed time is excessive because a higher cost  
25 attorney is conducting this nonlegal research rather than a lower cost paralegal or other  
26 real estate professional. Moreover, applicant could have asked debtor for assistance  
27 since he is an experienced real estate investor. The court will allow 1.0 hour of research  
28 time as reasonable (resulting in a reduction of \$1,425.00 in fees).



1 LOSRF claims 7.3 hours by Attorney Park for preparing charts of notes, interest  
2 rates, loan terms and real properties (2.1 hours on 7/1/11, 1.8 hours on 8/18/11, 0.4 hour  
3 on 8/26/11, 2.0 hours on 8/29/11 and 0.2 hour on 8/30/11, 0.1 hour on 8/31/11, 0.7 hour  
4 on 12/21/11) The court finds that the claimed time is excessive because a higher cost  
5 attorney is conducting this nonlegal word processing tasks rather than a lower cost  
6 paralegal or legal assistant. The court will allow 1.5 hours of attorney time for supervision  
7 and review of preparation of charts and 3.0 hours of administrative time at a legal  
8 assistant rate of \$125 per hour for preparing charts as reasonable (resulting in a  
9 reduction of \$1,075.00 in fees).

10 LOSRF claims 32.7 hours by Attorney Park for drafting the initial disclosure  
11 statement (2.0 hours on 6/16/11, 2.5 hours on 6/17/11, 2.5 hours on 7/11/11, 1.0 hour on  
12 7/12/11, 1.0 hour on 7/13/12, 1.0 hour on 7/14/12, 6.8 hours on 7/14/11, 3.8 hours on  
13 7/15/11, 1.5 hours on 7/16/11, 2.5 hours on 7/17/11, 4.0 hours on 7/18/11, 0.5 hour on  
14 7/19/11, 0.3 hour on 7/27/11, 0.5 hour on 8/12/11, 0.8 hour on 8/15/11). The court finds  
15 that the claimed time is excessive because the task to draft the initial disclosure  
16 statement which should be based on a standardized form pleading did not warrant the  
17 time claimed and attorney time is billed for nonlegal administrative tasks such as  
18 preparing notice for service and filing. The court will allow 20.0 hours of attorney time as  
19 reasonable (resulting in a reduction of \$3,175.00 in fees).

20 LOSRF claims 21.1 hours by Attorney Park for drafting the first amended  
21 disclosure statement (2.0 hours on 9/6/11, 3.2 hours on 9/7/11, 0.5 hour on 9/8/11, 5.2  
22 hours on 9/8/11, 6.9 hours on 9/9/11, 3.5 hours on 9/12/11, 0.8 hours on 9/12/11). The  
23 court finds that the claimed time is excessive because the task to amend a prior version  
24 of the disclosure statement did not warrant the time claimed. The court will allow 9.0  
25 hours of attorney time as reasonable (resulting in a reduction of \$3,025.00 in fees).

26 LOSRF claims 17.2 hours by Attorney Park for reviewing objections to, and  
27 drafting an omnibus reply to objections to, the first amended disclosure statement (0.3  
28 hour on 10/4/11, 0.2 hour on 10/4/11, 0.4 hour on 10/4/11, 0.4 hour on 10/5/11, 1.8 hour

1 on 10/5/11, 1.0 hour on 10/6/11, 0.4 hour on 10/6/11, 5.8 hours on 10/6/11, 0.4 hour on  
2 10/6/11, 0.5 hour on 10/7/11, 3.0 hours on 10/7/11, 1.0 hour on 10/11/11, 1.0 hour on  
3 10/11/11). The court finds that the claimed time is excessive because based on the  
4 court's review of the reply and the objections, the tasks to review the objections and draft  
5 the reply did not warrant the time claimed. The court will allow 8.0 hours of attorney time  
6 as reasonable (resulting in a reduction of \$2,300.00 in fees).

7 LOSRF claims 5.0 hours by Attorney Park for legal research on deemed  
8 acceptance of plan for nonvoting (3.8 hours on 12/9/11, 0.2 hour on 12/12/11 and 1.2  
9 hours on 12/13/11). The court finds that the claimed time is excessive because this issue  
10 only required minimal research; an experienced bankruptcy attorney like Attorney Fox  
11 would have known of the relevant law on this point, specifically the two conflicting cases  
12 of *In re M. Long Arabians*, 103 B.R. 211 (9<sup>th</sup> Cir. BAP 1989) and *In re Ruti-Sweetwater*,  
13 836 F.2d 1263 (10<sup>th</sup> Cir. 1988). Thus, the court will allow 0.5 hour of research time as  
14 reasonable to check on the current state of the case law (resulting in a reduction of  
15 \$1,125.00 in fees). (Moreover, the court does not understand why applicant represented  
16 in a status report on 12/6/11 without citing any legal authority or noting the conflict in the  
17 case law before this research was done that a nonvoting impaired creditor is deemed to  
18 accept the plan, which indicates lack of adequate supervision before the status report  
19 was filed.)

20 LOSRF claims 4.3 hours by Attorney Park for drafting the ballot summary (2.0  
21 hours on 12/12/11, 0.8 hour on 12/13/11 and 1.5 hours on 12/14/11) and 0.2 hour by  
22 Attorney Fox (0.2 hour on 12/14/11). The court finds that the claimed time is excessive  
23 because a higher cost attorney is conducting this nonlegal word processing tasks rather  
24 than a lower cost paralegal or legal assistant. The court will allow 0.2 hour by Attorney  
25 Fox and 2.0 hours of administrative time at a legal assistant rate of \$125 per hour as  
26 reasonable (resulting in a reduction of \$825.00 in fees).

27 LOSRF claims 1.0 hour by Attorney Park for service and filing of amended notice  
28 of status conference (1.0 hours on 12/15/11). The court finds that the claimed time is

1 excessive because a higher cost attorney is conducting this nonlegal administrative task  
2 rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.5  
3 hour of administrative time at a legal assistant rate of \$125 per hour as reasonable  
4 (resulting in a reduction of \$187.50 in fees).

5 LOSRF claims 0.9 hour by Attorney Park for service of notice of hearing on motion  
6 for late accepted ballots (0.9 hour on 1/15/12). The court finds that the claimed time is  
7 excessive because a higher cost attorney is conducting this nonlegal administrative task  
8 rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.5  
9 hour of administrative time at a legal assistant rate of \$125 per hour as reasonable  
10 (resulting in a reduction of \$162.50 in fees).

11 LOSRF claims 27.0 hours by Attorney Park for reviewing objections to plan  
12 confirmation and drafting a third amended disclosure statement and orders approving it  
13 (0.7 hour on 1/31/12, 0.3 hour on 1/31/12, 0.8 hour on 2/2/12, 0.5 hour on 2/7/12, 0.5  
14 hour on 2/9/12, 0.7 hour on 2/8/12, 0.2 hour on 2/9/12, 5.5 hours on 2/9/12, 0.9 hour on  
15 2/10/12 (2.9 hours devoted), 0.9 hour on 2/10/12, 0.8 hour on 2/10/12, 0.3 hour on  
16 2/13/12, 0.3 hour on 2/13/12, 0.2 hour on 2/20/12, 0.1 hour on 2/22/12, 0.8 hour on  
17 3/7/12, 0.1 hour on 3/7/12, 0.2 hour on 3/7/12, 3.0 hours on 3/8/12, 0.9 hour on 3/13/12,  
18 3.9 hours on 3/14/12, 0.1 hour on 3/21/12, 0.5 hour on 3/23/12, 0.3 hour on 3/28/12, 1.8  
19 hour 3/28/12, 0.8 hour on 3/28/12, 0.4 hour on 3/29/12, 2.0 hours on 3/29/12). The court  
20 finds that the claimed time is excessive because based on the court's review of the  
21 objections and third amended disclosure statement and related orders, the tasks to  
22 review the objections and prepare the third amended disclosure statement and related  
23 orders did not warrant the time claimed. The court will allow 12.0 hours of attorney time  
24 as reasonable (resulting in a reduction of \$3,750.00 in fees).

25 LOSRF claims 7.7 hours by Attorney Park for preparing a motion to sell raw land  
26 (0.1 hour on 2/3/12, 0.1 hour on 2/3/12, 2.8 hours on 2/3/12, 1.6 hours on 2/6/12, 0.5  
27 hour on 2/7/12, 0.2 hour on 2/7/12, 2.0 hours on 2/7/12, and 0.4 hour on 2/8/12). The  
28 court finds that the claimed time is excessive because this was a simple, straightforward

1 motion with no citation of legal authority that did not warrant the time claimed. The court  
2 will allow 3.0 hours of attorney time as reasonable (resulting in a reduction of \$1,175.00  
3 in fees).

4 LOSRF claims 17.5 hours by Attorney Park for reviewing objections to plan  
5 confirmation, and drafting a plan confirmation memorandum (0.5 hour on 4/18/12, 0.3  
6 hour on 4/19/12, 2.5 hours on 4/30/12, 0.4 hour on 5/1/12, 0.7 hour on 5/1/12, 0.3 hour  
7 on 5/2/12, 0.4 hour on 5/2/12, 0.2 hour on 5/2/12, 0.2 hour on 5/3/12, 1.0 hour on 5/3/12,  
8 0.8 hour on 5/4/12, 0.5 hour on 5/4/12, 0.5 hours on 5/4/12, 3.9 hours on 5/4/12, 0.5 hour  
9 on 5/4/12, 0.8 hour on 5/4/12, 0.5 hour on 5/4/12, 0.8 hour on 5/2/14, 0.5 hour on 5/5/12,  
10 0.7 hour on 5/7/12, 0.5 hour on 5/7/12, 0.5 hour on 5/7/12, 0.2 hour on 5/7/12, 0.1 hour  
11 on 5/11/12, 0.1 hour on 5/11/12, 0.1 hour on 5/11/12, ). The court finds that the claimed  
12 time is excessive because based on the court's review of the objections and the plan  
13 confirmation memorandum, the tasks to review the plan objections and to prepare the  
14 plan confirmation memorandum did not warrant the time claimed. The court will allow 8.0  
15 hours of attorney time as reasonable (resulting in a reduction of \$2,375.00 in fees).

16 The court is not "writing down" the time billed because that is the exercise of  
17 counsel's "billing judgment." Rather pursuant to the court's independent statutory duty to  
18 review a professional's fee application for "reasonableness" pursuant to Section 330 of  
19 the Bankruptcy Code, the court determines whether the services are reasonable or not  
20 reasonable if they are excessive and allows the fees accordingly. The court finds it  
21 appropriate to make adjustments in the award of fees to LOSRF by reducing the number  
22 of hours from the total billed by him as well as making other adjustments. Based on the  
23 above adjustments, the court disallows a total of \$37,927.50 in fees billed by LOSRF as  
24 excessive.<sup>3</sup>

25 \_\_\_\_\_  
26 <sup>3</sup> Alternatively, the court might have reduced the billing rate of \$250 per hour charged by LOSRF for  
27 Attorney Park's services as a novice attorney with only a few months experience when the services were  
first rendered by him on this case, but the court concludes that adjustments primarily in the number of  
hours billed by Attorney Park appropriately adjusts the fees for reasonableness in this case.

1 Fifth, the court must consider whether the professional exercised reasonable  
2 billing judgment. In considering billing judgment of the professional, the court looks at the  
3 following factors: (a) whether the burden of the probable cost of legal services is  
4 disproportionately large in relation to the size of the estate and maximum probable  
5 recovery; (b) to what extent will the estate suffer if the services are not rendered; and  
6 (c) to what extent may the estate benefit if the services are rendered and what is the  
7 likelihood of the disputed issues being resolved successfully. *In re Garcia*, 335 B.R. at  
8 724. Considering applicable factors regarding professional billing judgment, except for  
9 the fees disallowed above as excessive, the court finds as to LOSRF that the burden of  
10 the probable cost of professional services is not disproportionately large in relation to the  
11 size of the estate and maximum probable recovery as the amount of the fees is not  
12 unreasonably large compared to the size of the estate, that the estate would have  
13 suffered without LOSRF rendering competent business bankruptcy legal services to  
14 guide the debtor through the bankruptcy reorganization process and that the estate  
15 benefited by having competent business bankruptcy legal counsel to represent debtor in  
16 this business reorganization case. In this regard, debtor apparently objects to LOSRF's  
17 fees in general because he has "serious concern that professional fees are so high that  
18 they could jeopardize the approved plan." *Declaration of Mark Lebens in Dispute of Fees*  
19 *and Costs for Certified Public Accountant for Debtor-in-Possession for Services Provided*  
20 at 2. In considering the LOSRF's billing judgment, LOSRF's fees are reasonable after  
21 the reductions by the court, and the court finds that debtor has not shown that the  
22 requests for professional fees, including LOSRF's fees as reduced by the court,  
23 jeopardize debtor's plan of reorganization.

24 In LOSRF's second and final application for award of fees and costs, LOSRF  
25 requested an award of \$51,257.98 for the period from December 24, 2011 to May 16,  
26 2012. At trial, LOSRF agreed to reduce its fees by \$1,270.00 in accordance with its  
27 policy not to bill time for professionals billing for the same time (i.e., appearing at the  
28 same hearing or attending the same meeting) and \$1,491.50 for overbilled photocopying

1 and scan charges for a net amount requested of \$48,496.48. LOSRF also requests that  
2 the court award on a final basis fees and costs of \$158,327.24 previously awarded on an  
3 interim basis for the period from March 3, 2011 to December 23, 2011, of which the  
4 amount of \$60,594.74 is still owing. In sum, LOSRF requests a total award of fees and  
5 costs for the entire period from March 3, 2011 to May 16, 2012 on a final basis in the  
6 amount of \$206,823.72, of which \$109,091.72 is still owing and payment is requested by  
7 LOSRF. As discussed above, the court disallows a total of \$37,927.50 in fees as  
8 excessive.

9 For the foregoing reasons, the court determines that the LOSRF should be  
10 awarded professional fees and costs of \$168,896.22 as reasonable compensation  
11 pursuant to Section 330 for services rendered as accountants for the debtor-in-  
12 possession for the period from April 28, 2011 to May 16, 2012 pursuant to its second and  
13 final fee application for award of fees and costs on a final basis. Based on LOSRF's  
14 computations as adjusted by the court's disallowance of excessive fees, the amount due  
15 and owing LOSRF is \$71,164.22.

## 16 **2. Fee Application of Howard Fox, C.P.A.**

17 First, the court examines whether the services of the professional, CPA, were  
18 authorized. The answer is yes as the court approved CPA's application for employment  
19 as accountant for the debtor-in-possession.

20 Second, the court next inquires whether the services necessary or beneficial to the  
21 administration of the estate at the time they were rendered. As discussed herein, the  
22 court finds that the services of CPA were necessary and/or beneficial to the  
23 administration of the estate at the time they were rendered. The services of CPA were in  
24 support of the plan of reorganization of debtor-in-possession, and the accountant's work  
25 was to prepare accurate and complete financial projections of debtor's personal finances  
26 and his business of investment and management of real properties (including personal  
27 cash flow projections, rental business projections and property-by-property projections),  
28 which were needed in order for debtor to demonstrate feasibility of the plan of

1 reorganization. Multiple versions of these projections were required because changes  
2 were being made based on the assumptions and interest rate adjustments from  
3 negotiated settlements with creditors as well as adjustments for expenses and reserves  
4 requested by debtor as the case progressed.

5 Third, the court examines whether the services adequately documented. The  
6 court finds that CPA's services are adequately documented as shown by the detailed  
7 billing statements attached to its fee applications, which satisfactorily explain the services  
8 rendered.

9 Fourth, the court considers whether the fees required reasonable, taking into  
10 consideration the factors set forth in section 330(a)(3). As discussed above, the court  
11 considers the specific factors of Section 330(a)(3)(A)-(E): (A) the time spent on such  
12 services; (B) the rates charged for such services; (C) whether the services were  
13 necessary to the administration of, or beneficial at the time at which the service was  
14 rendered toward the completion of, a case under this title; (D) whether the services were  
15 performed within a reasonable amount of time commensurate with the complexity,  
16 importance, and nature of the problem, issue, or task addressed; and (E) whether the  
17 compensation is reasonable based on the customary compensation charged by  
18 comparably skilled practitioners in cases other than cases under [title 11]. *In re Garcia*,  
19 335 B.R. at 724.

20 The court now computes the lodestar for CPA. CPA only charged professional  
21 fees for the services of the accountant, Howard Fox, C.P.A., whose hourly rate is  
22 \$250.00. The hourly rate of the accountant appears to be reasonable in light of the work  
23 involved. Next, the court must address whether the number of hours expended is  
24 reasonable. After a careful review of the billing records submitted by CPA, the court finds  
25 that the number of hours billed in this case be generally reasonable. The court notes that  
26 debtor had no objection to the specific billing entries of CPA on its fee application.  
27 Debtor objected to CPA's fee application as unreasonable on grounds that CPA's fees  
28 were subject to the "soft" cap debtor contended applied to the fees of all of the

1 professionals handling his bankruptcy case. As stated previously, the court finds that the  
2 professionals did not agree to any such cap on their fees and that there was no fixed  
3 contractual limit on the professional fees of LOSRF and CPA.

4 Debtor also objects that he was not served with a copy of CPA's first fee  
5 application. While the proof of service for the first fee application does not indicate that  
6 debtor was served with it, apparently arguing that he was denied procedural due process,  
7 there is no due process violation because (1) debtor had an opportunity to review and  
8 comment on CPA's first fee application, which he had as indicated by his signed  
9 declaration in support of the first fee application; (2) the fees awarded CPA under the first  
10 fee application was only awarded on an interim basis, subject to the court's final review;  
11 and (3) debtor has had a meaningful opportunity to be heard on all fees of CPA, including  
12 those on the first fee application, as indicated by debtor's written and oral opposition to all  
13 fees of CPA in the proceedings on CPA's second fee application, including the trial,  
14 during which debtor had the opportunity to present evidence, and argue, against the  
15 award of any fees to CPA, and to be fully heard by the court.

16 Fifth, the court considers whether CPA exercised reasonable billing judgment.  
17 Considering applicable factors regarding professional billing judgment, the court finds as  
18 to CPA that the burden of the probable cost of professional services is not  
19 disproportionately large in relation to the size of the estate and maximum probable  
20 recovery as the amount of the fees is modest compared to the size of the estate, that the  
21 estate would have suffered without CPA rendering accurate and professional accounting  
22 services to support the debtor and his plan of reorganization and that the estate benefited  
23 by having accurate accounting services in the financial data to support debtor and the  
24 plan of reorganization. In this regard, debtor apparently objects to CPA's fees in general  
25 because he has "serious concern that professional fees are so high that they could  
26 jeopardize the approved plan." *Declaration of Mark Lebens in Dispute of Fees and Costs*  
27 *for Certified Public Accountant for Debtor-in-Possession for Services Provided* at 2. In  
28 considering the CPA's billing judgment, CPA's fees are relatively modest, and the court



1 finds that debtor has not shown that the requests for professional fees, particularly those  
2 of CPA, jeopardize debtor's plan of reorganization.

3 For the foregoing reasons, the court determines that the CPA should be awarded  
4 professional fees of \$5,500 as reasonable compensation pursuant to Section 330 for  
5 services rendered as accountants for the debtor-in-possession for the period from  
6 January 1, 2012 to May 16, 2012 pursuant to his second and final fee application for  
7 award of fees and costs.

8 For the foregoing reasons, the court determines that the CPA should be awarded  
9 professional fees of \$26,562.50 as reasonable compensation pursuant to Section 330 for  
10 services rendered as accountants for the debtor-in-possession for the period from April  
11 28, 2011 to May 16, 2012 pursuant to his second and final fee application for award of  
12 fees and costs on a final basis.

13 This separate statement of decision shall constitute the court's further findings of  
14 fact and conclusions of law in addition to those separate findings of facts and conclusions  
15 of law adopted by the court. To the extent that there is any inconsistency between the  
16 separate statement of decision and the findings of fact and conclusions of law, the  
17 separate statement of decision governs.

18 Applicants are ordered within 14 days of entry of this decision to submit proposed  
19 final orders reflecting the awards of fees and expenses in accordance with the court's

20 ///

21 ///

22 ///

23

24

25

26

27

28

1 rulings in this separate statement of decision and the findings of fact and conclusions of  
2 law adopted by the court.

3 IT IS SO ORDERED.

4 ###

5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 Date: March 27, 2013



25 Robert Kwan  
26 United States Bankruptcy Judge  
27  
28

## NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (*specify*) **SEPARATE STATEMENT OF DECISION ON DEBTOR'S OBJECTIONS TO FINAL FEE APPLICATIONS OF PROFESSIONALS OF THE ESTATE** was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

**I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of **March 27, 2013**, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below:

- Moises S Bardavid mbardavid@hotmail.com
- Deborah Conley bkmail@prommis.com
- Steven R Fox emails@foxlaw.com
- Christopher Hoo hoo.christopher@gmail.com
- Mehrdaud Jafarnia bknotice@mccarthyholthus.com, mjaafarnia@mccarthyholthus.com
- Gerald S Kim cdcaecf@bdfgroup.com
- John H Kim jkim@cookseylaw.com
- Paul H Kim Pkim@counsel.lacounty.gov
- William Malcolm bill@mclaw.org
- Alvin Mar alvin.mar@usdoj.gov
- Kelly M Raftery bknotice@mccarthyholthus.com
- J Alexandra Rhim arhim@dykema.com, CPerez@dykema.com
- Cassandra J Richey cmartin@pprlaw.net
- Timothy J Silverman tim@sgsslaw.com
- Lisa B Singer bkmail@rosicki.com
- Nathan F Smith nathan@mclaw.org
- Scott O Smith ssmith@buchalter.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov
- Darlene C Vigil cdcaecf@bdfgroup.com
- Edward T Weber bknotice@rcolegal.com

**II. SERVED BY THE COURT VIA U.S. MAIL:** A copy of this notice and a true copy of this judgment or order was sent by U.S. Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

Mark Lebens  
568 E. Lago Lindo Road  
Palmdale, CA 93550

**III. TO BE SERVED BY THE LODGING PARTY:** Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s) and/or email address(es) indicated below: