



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

**MEMORANDUM DECISION ON THIRD
AND FINAL APPLICATION FOR
PAYMENT OF FEES AND EXPENSES
PURSUANT TO 11 U.S.C. § 330**

The matter of the Third and Final Application for Payment of Fees and Expenses pursuant to 11 U.S.C. § 330 (the "Application") filed by Law Offices of Steven R. Fox ("LOS RF") was taken under submission after hearing on September 16, 2013. Appearances were as noted on the record.

The Application requests final approval of fees in the amount of \$63,106.00 and expenses in the amount of \$4,672.09 pursuant to 11 U.S.C. § 330. *Application* at Docket Entry No. 431. The Reorganized Debtor, Mark W. Lebens ("Debtor"), filed his Objection to Law Offices of Steven R. Fox Third Application for Award of Fees and Costs for Post Confirmation Fees Incurred in Connection with Litigation of Fee Application (the "Opposition") on May 7, 2013, and LOS RF filed its reply on May 14, 2013 (the "Reply"). Having considered the parties' written submissions, the record of the case as a whole,

1 and the argument and representations made at the hearing, the court makes its ruling as
2 discussed in detail below.

3 The court may award compensation to LOSRF as a professional person employed
4 under 11 U.S.C. § 327 as general bankruptcy counsel for debtor-in-possession for:

5 (A) reasonable compensation for actual, necessary services
6 rendered by the trustee, examiner, ombudsman,
7 professional person, or attorney and by any
8 paraprofessional person employed by any such person;
9 and

10 (B) reimbursement for actual, necessary expenses.

11 11 U.S.C. § 330(a)(1).

12 In determining the amount of reasonable compensation to be awarded, “the court
13 shall consider the nature, the extent, and the value of such services, taking into account
14 all relevant factors.” 11 U.S.C. § 330(a)(3). The relevant factors include (1) the time
15 spent on the services; (2) the rates charged; (3) whether the services were necessary or
16 beneficial toward completion of the case at the time they were rendered; (4) “whether the
17 services were performed within a reasonable amount of time commensurate with the
18 complexity, importance, and nature of the problem, issue, or task addressed;” (5) whether
19 the professional person has demonstrated skill and experience in the bankruptcy field;
20 and (6) whether the compensation is reasonable in relation to comparably skilled
21 practitioners in other bankruptcy cases. *Id.*

22 **I. Whether Fees May be Awarded For Litigating Fee Application**

23 Debtor first objects that the majority of the fees now requested should be
24 disallowed because they were incurred to litigate, rather than prepare, LOSRF’s fee
25 application. *Opposition* at 6:22-10:13. Debtor argues that his opposition to the LOSRF’s
26 second and final fee applications fees succeeded in obtaining an almost 80% reduction in
27 the amount awarded, and LOSRF cannot be compensated for unsuccessfully litigating an
28 overstated fee application. *Id.* Debtor also asserts the terms of his confirmed plan are
binding and those terms do not contemplate LOSRF incurring further fees to litigate its

1 second fee application. *Id.* at 1:15-11:27. LOSRF requests \$54,405.00 in fees in the
2 current Application for litigating the second fee application. *Application* at 7:15-9:5.

3 LOSRF also requests a total amount of \$4,672.09 in requested expenses. *Id.* at
4 10:12-11:6 and n. 2, Exhibits F1-F7. It appears to the court that the majority of the
5 expenses are related to the fee application litigation. Moreover, Debtor did not make
6 specific objections to LOSRF's claimed expenses. Accordingly, the court based on its
7 review of the reasonableness of the expenses claimed by LOSRF in the amount of
8 \$4,672.09 allows such expenses in full.

9 A. Entitlement to Fees Under Applicable Bankruptcy Law

10 Bankruptcy counsel is "entitled to compensation for the time and effort spent in
11 preparing fee applications." *In re Nucorp Energy, Inc.*, 764 F.2d 655, 662 (9th Cir. 1985).
12 This holding also applies to the presentation of fee applications in fee dispute litigation.
13 *Id.* at 662-663. However, it is not an abuse of discretion per se for the court to deny fees
14 incurred by attorneys in unsuccessfully opposing a meritorious objection to their fee
15 application. *Boldt v. Crake (In re Riverside-Linden Investment Co.)*, 945 F.2d 320, 322-
16 323 (9th Cir. 1991). But fees for litigation in defense of fee applications are not forbidden
17 either. *Edwards & Hale, Ltd. v. Smith (In re Smith)*, 317 F.3d 918, 928 (9th Cir. 2002)
18 (*abrogated by Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) to the extent it
19 holds that a professional person employed by the debtor may be compensated from the
20 estate without being employed under 11 U.S.C. § 327). In order to be compensated for
21 fee application litigation, the applicant must demonstrate both that the services satisfy the
22 requirements of 11 U.S.C. § 330(a)(4)(A) and that the case exemplifies a set of
23 circumstances in which the time and expense incurred by the litigation is necessary
24 within the meaning of § 330(a)(1). *Id.*; see also, *In re Wind N' Wave*, 509 F.3d 938, 943-
25 944 (9th Cir. 2007) (reciting the two-part test in *Smith* and applying it in the context of
26 fees awarded to creditors under 11 U.S.C. § 503(b)(4)). Section 330(a)(4)(A) of the
27 Bankruptcy Code provides that, in cases other than those under Chapters 12 or 13 of the
28 Bankruptcy Code, the court shall not allow compensation for unnecessary duplication of

1 services or services that were not reasonably likely to benefit the estate or necessary for
2 the administration of the case. 11 U.S.C. § 330(a)(4)(A).

3 For example, fee application litigation services can be determined to be necessary
4 where they benefit the bankruptcy estate, by determining the amount of administrative
5 fees owed, and where services provided are not duplicative of those of other
6 professionals. *In re Smith*, 317 F.3d at 928-929. This is particularly true where the
7 applicant prevails in the fee dispute litigation and the objections were frivolous because to
8 hold otherwise would encourage meritless objections to fee applications. *Id.* at 929. On
9 the other hand, allowing such fees may encourage meritless fee requests because
10 attorneys could recover fees to oppose an objection to the meritless request regardless
11 of whether they were awarded the requested fees. *In re Riverside-Linden Investment*
12 *Co.*, 945 F.2d at 323. As noted earlier, it is not an abuse of discretion to deny fees where
13 the applicant is unsuccessful and the objection to the fee application results in the
14 disallowance of most fees. *Id.* at 322-323. The determination of whether *Nucorp Energy*
15 or *Riverside-Linden* should be applied in evaluating fees for fee application litigation
16 depends on the particular circumstances of the case and is largely within the informed
17 discretion of the bankruptcy court. *In re Smith*, 945 F.2d at 929.

18 The court, in its discretion, finds the present case is more similar in type to *In re*
19 *Smith* and *In re Nucorp Energy* than to *In re Riverside-Linden*, and LOSRF should be
20 awarded its reasonable fees incurred to litigate its prior fee application which was
21 objected to by Debtor. While Debtor did obtain some reduction in the fees previously
22 awarded to LOSRF, it cannot be said that his litigation of LOSRF's second fee application
23 was entirely successful. Debtor is correct that the amount and percentage of fees
24 disallowed under the court's Separate Statement of Decision on Debtor's Objections to
25 Final Fee Applications of Professionals of the Estate ("Final Fee Order") appears high
26 when looking only at the fees requested for the first time under the second application.
27 *Opposition* at 9:23-10:3. However, LOSRF's second fee application also sought approval
28 of fees on a final basis that previously had been approved on an interim basis. Thus, if

1 the total amount of fees considered under the final fee application is included in the
2 calculation, the majority of fees were allowed by the court's prior decision. Specifically,
3 the court disallowed \$37,927.50 in fees as excessive out of \$206,823.72 sought. *Final*
4 *Fee Order* at 22:4-13. In other words, the court actually awarded approximately 81% of
5 the fees requested in the second fee application. *Id.*

6 It is also not accurate to say that each of Debtor's arguments in objecting to the
7 prior fee application was successful. The court held that LOSRF was authorized to incur
8 professional fees, that the professional services were necessary or beneficial to the
9 bankruptcy estate at the time they were rendered, and that they were adequately
10 documented. *Final Fee Order* at 5:14-7:2. In so doing, the court generally overruled
11 Debtor's objections regarding authorization of the requested fees. *Id.* The court also
12 found the hourly rates charged and the number of hours expended generally were
13 reasonable. *Id.* at 9:4-13. The court overruled Debtor's objection that fees were capped
14 by agreement of the parties, finding there was no such agreement to do so. *Id.* at 10:14-
15 27. Finally, in finding some of the time charged by Attorney Park was excessive, the
16 court stated it did not entirely agree with Debtor's objections, but found the objections had
17 merit "to some extent." *Id.* at 11:2-4. LOSRF's second and final fee application
18 requested approval of \$209,585.22 in fees and expenses. *Id.* at 21:24-22:8. Debtor
19 argued that the court should deny final approval of all fees requested. *[Proposed]*
20 *Findings of Fact and Conclusions of Law on Hearing on Objections to Final Fee*
21 *Applications Filed by Professionals of the Estate* at Docket Entry No. 408 17:22-28. As
22 already noted above, in its prior memorandum decision, the court declined to deny final
23 approval of all fees requested by LOSRF, but allowed over 80% of the requested fees
24 and expenses.

25 The second prong of the *Smith* test is satisfied because the instant case
26 exemplifies a set of circumstances in which the time and expense incurred by the
27 litigation is necessary within the meaning of 11 U.S.C. § 330(a)(1). LOSRF's second and
28 final fee application was necessary in determining the amount of administrative fees

1 owed to LOSRF as debtor's prior counsel on a final basis because there had only been
2 an interim award prior to that application. While the court did disallow a portion of the
3 fees requested as being excessive, it cannot be said that the application itself was
4 meritless. Finally, LOSRF was successful in opposing several of the objections raised by
5 Debtor, and thus LORSF's decision to oppose those objections and litigate the matter
6 cannot be said to be meritless either. The court determines that LOSRF is entitled to
7 compensation for litigating its second and final fee application under applicable
8 bankruptcy law.

9 The remaining inquiry is whether the professional services rendered should be
10 disallowed under 11 U.S.C. § 330(a)(4)(A) as compensation for unnecessary duplication
11 of services or services that were not reasonably likely to benefit the estate or necessary
12 for the administration of the case, which will be discussed below after addressing
13 Debtor's other preliminary objections.

14 B. Effect of Plan Confirmation

15 Debtor next argues that fees for litigating the final fee application should be
16 disallowed because the provisions of the debtor's confirmed plan, which did not
17 contemplate an award of additional fees, are binding pursuant to 11 U.S.C. § 1141(a).
18 *Opposition* at 10:15-11:27. This argument fails because the Supreme Court has held
19 § 1141(a) cannot bind creditors with respect to post-confirmation claims. *Holywell Corp.*
20 *v. Smith*, 503 U.S. 47, 58-59 (1992). Any binding effect would therefore apply only to
21 services provided pre-confirmation. Debtor's Chapter 11 reorganization plan was
22 confirmed by order of the court entered on July 2, 2012 after a plan confirmation hearing
23 on May 16, 2012. *Order Confirming Debtor-in-Possession's Third Amended Plan of*
24 *Reorganization (As Further Amended)* at Docket Entry No. 377. The Application seeks
25 fees and expenses incurred after May 16, 2012, so that such fees and expenses are
26 post-confirmation claims and not necessarily bound by the provisions of the plan.
27 *Application* at Exhibit C.

1 Furthermore, it does not appear that the requested fees and expenses would be
2 prohibited by the plan terms themselves even if they were somehow binding under these
3 circumstances. The plan itself indicates the amount of \$50,000 for counsel's fees is
4 "estimated" and that an amount allowed by the court will be owed and paid under the
5 plan. *Debtor's Chapter 11 Third Amended Plan (as Further Amended)* at Docket Entry
6 No. 329, 2:3-19. The plan provides the "Court will retain jurisdiction to the fullest extent
7 provided by law." *Id.* at 39:1-2. Section 1142 of the Bankruptcy Code also provides the
8 court retains jurisdiction to implement the plan. 11 U.S.C. § 1142. The plan therefore
9 contemplates that there may be further proceedings to determine what amount is
10 allowable as administrative expense fees to LOSRF as counsel for debtor-in-possession,
11 and it is only logical to conclude there is the possibility that some dispute or litigation
12 would arise over allowance of those fees.

13 Finally, Debtor argues the application for fees is untimely under the confirmation
14 order. *Opposition* at 10:15-11:27. Debtor is correct in observing that the order
15 confirming his Chapter 11 plan provided for professional fee, or non-ordinary course,
16 administrative expense claims to be filed within 90 days of the effective date, meaning
17 such claims must be filed no later than October 30, 2012. *Order Confirming Debtor-in-*
18 *Possession's Third Amended Plan of Reorganization (as Further Amended)* at Docket
19 Entry No. 377 at ¶¶ 3 and 18. LOSRF's second and final application for compensation
20 was timely filed on May 22, 2012. *Second and Final Application for Award of Fees and*
21 *Costs for Counsel for Debtor-in-Possession for Services Provided from Petition Date*
22 *Through Confirmation Hearing Date* at Docket Entry No. 359.

23 The litigation of LOSRF's second and final application was protracted and involved
24 several hearings, including evidentiary hearings conducted on September 27 and
25 October 25, 2012. The court issued its memorandum decision on the second fee
26 application on March 27, 2013. *Separate Statement of Decision on Debtor's Objections*
27 *to Final Fee Applications of Professionals of the Estate* at Docket Entry No. 417.

1 Therefore, much of LOSRF's efforts in litigating its second and final fee application
2 occurred after the plan confirmation order was entered on July 2, 2012.

3 It does not appear from the plan confirmation order itself that the possibility of
4 additional fees in litigating fee applications was contemplated in setting the 90-day
5 administrative expense deadline. *Order Confirming Debtor-in-Possession's Third*
6 *Amended Plan of Reorganization (as Further Amended)* at Docket Entry No. 377 at ¶¶ 3
7 and 18. The court now determines that it would be an unreasonable interpretation of the
8 plan confirmation order to apply the deadline to post-confirmation fees and fees incurred
9 after the deadline had passed because to do so would require an impossibility, in that
10 counsel would have to predict the fees to be incurred in the future, and thwart the
11 principle expressed in 11 U.S.C. § 330(a)(1) that only actual and necessary expenses be
12 compensated. Applying the deadline to post-confirmation fees and fees incurred after the
13 deadline had passed would also allow Debtor to hinder counsel's ability to obtain fees for
14 defending its fee application through delay, when counsel would otherwise be able to
15 recover those fees. "[I]t is well recognized that a bankruptcy court has the power to
16 interpret and enforce its own orders." *In re Wilshire Courtyard*, 729 F.3d 1279, 1289 (9th
17 Cir. 2013). The court declines to interpret its plan confirmation order in this case as
18 requiring counsel to file the fee application within 90 days of the effective date where the
19 underlying second and final fee application was timely filed and the confirmation order
20 does not contemplate or provide for postconfirmation fees incurred in litigating
21 professional fee applications. Therefore, the court overrules Debtor's objections to the
22 fee application on grounds that confirmation of his Chapter 11 reorganization plan
23 somehow precludes determination of the application.

24 **II. Reasonableness of Fees for Litigating Fee Application**

25 Having determined that LOSRF is entitled to recover reasonable attorneys' fees
26 and costs for litigating its prior fee application, the court must now determine what
27 amount is reasonable under 11 U.S.C. § 330. To determine the amount of reasonable
28 compensation to be awarded, "the court shall consider the nature, the extent, and the

1 value of such services, taking into account all relevant factors.” 11 U.S.C. § 330(a)(3).
2 The relevant factors include (1) the time spent on the services; (2) the rates charged; (3)
3 whether the services were necessary or beneficial toward completion of the case at the
4 time they were rendered; (4) “whether the services were performed within a reasonable
5 amount of time commensurate with the complexity, importance, and nature of the
6 problem, issue, or task addressed;” (5) whether the professional person has
7 demonstrated skill and experience in the bankruptcy field; and (6) whether the
8 compensation is reasonable in relation to comparably skilled practitioners in other
9 bankruptcy cases. *Id.*

10 The court here is primarily concerned with the fourth factor under § 330(a)(3),
11 “whether the services were performed within a reasonable amount of time commensurate
12 with the complexity, importance, and nature of the problem, issue, or task addressed.”
13 11 U.S.C. § 330(a)(3)(D). A fee calculated by multiplying a reasonable hourly rate by the
14 number of hours actually worked (the “lodestar” method) results in a presumptively
15 reasonable fee. *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988)
16 (citation omitted). However, a fee applicant bears the burden of proof in establishing that
17 it is entitled to the fees requested, and the bankruptcy judge, as the finder of fact, has
18 wide discretion in determining reasonable compensation. *In re Roderick Timber Co.*, 185
19 B.R. 601, 606 (9th Cir. BAP 1995).

20 In determining reasonable compensation, the court must also determine whether
21 the professional exercised reasonable billing judgment. *In re Garcia*, 335 B.R. 717, 724
22 (9th Cir. BAP 2005), *citing*, *Kotel, P.C. v. Bergen Brunswick Drug Co. (In re Mednet)*, 251
23 B.R. 103, 108 (9th Cir. BAP 2000). In exercising reasonable billing judgment, a
24 professional should consider: (1) whether the burden of the costs of legal services will be
25 disproportionately large in relation to the size of the estate and the maximum probable
26 recovery; (2) the extent the estate will suffer if the services are not rendered; and (3) the
27 extent the estate may benefit and the likelihood that the disputed issues will be resolved
28 successfully. *Id.* As discussed herein, the court finds that LOSRF did not exercise

1 reasonable billing judgment in regard to all of the fees charged for litigating its final fee
2 application, and there are several excessive claims for time expended. The court does
3 not exercise its own "billing judgment," but rather exercises its independent statutory duty
4 to review the fees for reasonableness under 11 U.S.C. § 330.

5 The court makes specific determinations regarding the fees requested and allows
6 fees in part as reasonable, and disallows fees in part as follows.

7 Fees for Preparations for Evidentiary Hearing: LOSRF claims 58.5 hours for
8 Attorney Park to prepare for the evidentiary hearing on the fee application as reflected in
9 the billing entries for his services rendered and claimed between August 15, 2012 and
10 September 26, 2012. *Application*, Exhibit E-2 at 85-90. LOSRF billed 58.5 hours at
11 \$14,625.00 for Attorney Park's services in preparing for the evidentiary hearing on the fee
12 application: 8/15/12 ("Begin preparation work for evidentiary hearing on fee
13 application."): 2.1 hours at \$250/hour, \$525.00; 8/16/12 ("Continue research on attorney
14 fee application approval."), 1.8 hours at \$250/hour, \$450.00; 8/16/12 ("Continue
15 preparation for hearing on fee applications."), 2.5 hours at \$250/hour, \$625.00; 8/17/12
16 ("Meeting with SRF re: preparations for hearing on fee applications."), 0.3 hours at
17 \$250/hour, \$75.00; 8/17/12 ("Continue work on preparation for hearing on fee
18 applications."), 3.0 hours at \$250/hour, \$750.00; 8/20/12 ("Continue work on preparation
19 for fee application hearings."), 2.0 hours (not including exhibit preparation) at \$250/hour,
20 \$500.00; 8/21/12 ("Continue work on preparation for fee application hearings."), 1.8
21 hours at \$250/hour, \$450.00; 8/23/12 ("Continue work on preparation for fee application
22 hearings."), 1.8 hours at \$250/hour, \$450.00; 8/27/12 ("Continue preparations for fee
23 application hearing."), 2.0 hours at \$250/hour, \$500.00; 8/29/12 ("Continue preparations
24 for fee application hearings."), 2.8 hours at \$250/hour, \$700.00; 8/30/12 ("Continue work
25 on preparation for fee application hearing."), 3.8 hours at \$250/hour, \$950.00; 8/31/12
26 (Continue fee application hearing preparations."), 5.8 hours at \$250/hour, \$1,450.00;
27 9/4/12 ("Continue preparation for hearing on fee applications."), 2.5 hours at \$250/hour,
28 \$625.00; 9/6/12 ("Continue preparation for fee application hearing."), 2.7 hours at

1 \$250/hour, \$675.00; 9/7/12 ("Continue work on fee application hearing preparations."),
2 4.2 hours at \$250/hour, \$1,050.00; 9/10/12 ("Continue work on fee application hearing
3 preparation."), 1.6 hours at \$250/hour, \$400.00; 9/11/12 ("Meeting with SRF re: fee
4 application hearing preparation and strategy."), 0.6 hours at \$250/hour, \$150.00; 9/13/12
5 ("Continue preparation for fee application hearing."), 1.4 hours at \$250/hour, \$350.00;
6 9/14/12 ("Continue preparations for fee application hearing."), 2.5 hours at \$250/hour,
7 \$625.00; 9/17/12 ("Continue work on preparations for fee application hearing."), 5.0
8 hours at \$250/hour, \$1,250.00; 9/19/12 ("Continue work on preparations for fee
9 application hearing."), 2.6 hours at \$250/hour, \$650.00; 9/20/12 ("Continue work on
10 preparation of cross exam questions for fee application hearing."), 1.5 hours at
11 \$250/hour, \$375.00; 9/21/12 ("Communications to/from Howard Fox re: fee application
12 hearing preparations."), 0.2 hours at \$250/hour, \$50.00; 9/21/12 ("Continue with
13 preparations for fee application hearing."), 1.0 hour at \$250/hour, \$250.00; 9/24/12
14 ("Continue with preparations for fee application hearing."), 3.0 hours at \$250/hour,
15 \$750.00. *Application* at Exhibit E-2.

16 LOSRF argues that this time is not excessive because Debtor's objections were
17 not specific and its counsel had to prepare for the hearings without knowing what issues
18 would be raised. *Application* at 7:20-8:10. Even if this were the case, the court finds the
19 number of hours expended by Attorney Park in preparation for the evidentiary hearing
20 was excessive because the issue before the court in the evidentiary hearing on the fee
21 application was the reasonableness of the fees claimed by LOSRF. While Debtor's
22 objections may have seemed general in nature, the main thrust of Debtor's objections
23 was that the professional fees, including those of LOSRF, were too high (i.e.,
24 unreasonable) and their payment would jeopardize his plan. *Declaration of Mark Lebens*
25 *in Dispute of Fees and Costs for Counsel for Debtor-in-Possession for Services Provided*
26 at Docket Entry No. 370, ¶ 10. Thus, the court now finds it somewhat ironic that Attorney
27 Park had to spend much time preparing for the evidentiary hearing on the
28 reasonableness of his and the firm's fees.

1 It is hard to determine from the billing entries that Attorney Park's fees for his
2 services in preparing for the evidentiary hearing were reasonable because there is no
3 meaningful explanation of his work in the billing entries, which gave only generic and
4 uninformative descriptions of either "begin preparations for evidentiary hearing" (the first
5 entry) and "continue preparations for evidentiary hearing" (the remaining entries). The
6 court is left to guess what Attorney Park did in preparing for trial when the only real issue
7 was whether the services of his firm previously rendered and claimed were reasonable,
8 which can be evaluated based on the billing statements submitted by LOSRF and the
9 record of the proceedings of this case before the court as reflected in the pleadings and
10 orders on the docket as well as the prior hearings which LOSRF as counsel attended.
11 There was, in this court's judgment, minimal need, to prepare in light of this evidentiary
12 record. Accordingly, the court determines that the time of 7.0 hours at \$250/hour for a
13 total of \$1,750.00 for Attorney Park's services in preparing for the evidentiary hearing is
14 reasonable (resulting in a reduction of \$12,875.00) and may be allowed, which is in the
15 court's view generous under these circumstances in light of the nebulous description of
16 the services rendered.

17 Fees for Trying the Matter: LOSRF claims 14.1 hours at \$5,640.00 for Attorney
18 Fox's services in appearing at the evidentiary hearing on the fee application: 9/27/12: 7.5
19 hours at \$400/hour, \$3,000.00; 10/25/12: 6.6 hours at \$400/hour, \$2,640.00. The court
20 determines that 14.1 hours at \$5,640.00 for Attorney Fox's services in appearing at the
21 evidentiary hearing is reasonable. LOSRF also billed 10.6 hours at no charge for
22 Attorney Park's services in appearing at the evidentiary hearing on the fee application:
23 9/27/12: 6.2 hours at \$250/hour, no charge; 9/27/12: 0.4 hours at \$250/hour, \$100;
24 10/25/12: 4.0 hours at \$250/hour, \$1,000.00. Since LOSRF did not charge for Attorney
25 Park's services in appearing at the evidentiary hearing in light of its policy not to charge
26 for an additional attorney appearing at a hearing, the court determines that this was an
27 exercise of reasonable billing judgment.

Fees for Preparing LOSRF'S Proposed Findings of Fact and Conclusions of Law:

LOS RF billed for 42.1 hours for attorney time in preparing proposed findings of fact and conclusions of law. LOS RF billed 4.1 hours at \$1,640.00 for Attorney Fox's services in preparing and reviewing proposed findings of fact and conclusions of law: 11/8/12: 1.7 hours at \$400/hour, \$680.00; 11/9/12: 2.4 hours at \$250/hour, \$960.00. The court determines that the time of 4.1 hours at \$1,640.00 for Attorney Fox's services in preparing and reviewing proposed findings of fact and conclusions of law is reasonable. Attorney Fox was lead trial counsel, and given the issues at trial, the claimed time for him in preparing and reviewing proposed findings of fact and conclusions of law is reasonable. LOS RF also billed 38.0 hours at \$9,500.00 for Attorney Park's services in preparing proposed findings of fact and conclusions of law: 10/29/12 ("Begin work on proposed findings of fact and conclusions of law."), 2.0 hours at \$250/hour, \$500.00; 10/30/12 ("Continue work on proposed findings of fact and conclusions of law for fee application."), 3.8 hours at \$250/hour, \$950.00; 10/31/12 ("Continue work on proposed findings of fact and conclusions of law."), 3.6 hours at \$250/hour, \$900.00; 11/2/12 ("Continue work on findings of fact and conclusions of law."), 3.7 hours at \$250/hour, \$925.00; 11/5/12 ("Continue work on proposed findings of fact and conclusions of law."), 5.0 hours at \$250/hour, \$1,250.00; 11/6/12 ("Continue work on proposed findings of fact and conclusions of law."), 3.4 hours at \$250/hour, \$850.00; 11/7/12 ("Continue work on proposed findings of fact and conclusions of law."), 3.0 hours at \$250/hour, \$750.00; 11/8/12 ("Continue work on proposed findings of fact and conclusions of law."), 5.2 hours at \$250/hour, \$1,300.00; 11/9/12 ("Continue work on proposed findings of fact and conclusions of law for fee application hearing."), 6.4 hours at \$250/hour, \$1,600.00; 11/9/12 ("Service and filing of proposed findings of fact and conclusions of law."), 0.8 hours at \$250/hour, \$200.00; 11/8/12 ("Continue work on proposed findings of fact and conclusions of law for fee application hearing."), 1.1 hours at \$250/hour, \$275.00. LOS RF asserts that Attorney Park had to listen to the entire 6.5 hour audio recording for the hearing, conduct research, and prepare a 48-page proposed findings of fact and

1 conclusions of law. *Application* at 8:13-18 and Exhibit E-2. Much of this work was
2 unnecessary in the court's view. For example, it was unnecessary for Attorney Park to
3 re-listen to the entire audio recording of the hearing because he attended the hearing and
4 should have recalled much of the proceedings. Moreover, the issue before the court was
5 reasonableness of LOSRF's fees, which was a straightforward and simple issue, and the
6 proposed findings and conclusions of law could have been submitted in much reduced
7 manner and less argumentative to identify the fee categories as reasonable. It appears
8 that much of the time spent was to reargue LOSRF's positions on Debtor's objections to
9 the claimed fees in the proposed findings of fact and conclusions of law submitted by
10 LOSRF rather than proposing findings of fact and conclusions of law indicating the
11 reasonableness of the fees claimed. As discussed in the prior memorandum decision,
12 Attorney Park is a new attorney and apparently still learning how to prepare pleadings
13 and thus, he took much more than what was reasonably necessary to prepare LOSRF's
14 proposed findings of fact and conclusions of law. *See Separate Statement of Decision*
15 *on Debtor's Objections to Final Fee Applications of Professionals of the Estate* at Docket
16 Entry No. 417 at 5-22. The same concerns that the court had expressed about Attorney
17 Park's lack of experience and relative inefficiency in its prior decision are applicable here.
18 *Id.* Attorney Park had been admitted to the bar in December 2010, and the claimed
19 services were rendered within about 18 months of his admittance to the bar. *Id.* The
20 court determines that the time of 8.0 hours at \$2,000.00 for Attorney Park's services in
21 preparing proposed findings of fact and conclusions of law is reasonable (resulting in a
22 reduction of \$7,500.00) and may be allowed.

23 Nonetheless, LOSRF is awarded under this ruling \$3,640.00 in fees based on
24 allowed attorney time of 12.1 hours, which is not insubstantial, and as discussed, reflects
25 the reasonable value of the work performed on this task for the estate.

26 Fees for Preparing Responses to Debtor's Proposed Findings of Fact and
27 Conclusions of Law: LOSRF billed for 21.7 hours for attorney time in preparing proposed
28 findings of fact and conclusions of law. LOSRF billed 1.1 hours at \$440 for Attorney

1 Fox's services in responding to Debtor's proposed findings of fact and conclusions of law:
2 12/19/12, 1.1 hours at \$400/hour, \$440.00. The court determines that the time of 1.1
3 hours at \$440.00 for Attorney Fox's services in preparing a response to the Debtor's
4 findings of fact and conclusions of law is reasonable and may be allowed. LOSRF billed
5 20.6 hours at \$5,150.00 for Attorney Park's services in responding to Debtor's proposed
6 findings of fact and conclusions of law: 12/11/12 ("Review Lebens proposed findings of
7 fact and conclusions."), 0.3 hours at \$250/hour, \$75.00; 12/13/12 ("Begin work on
8 reply/objections to Debtor's proposed findings of facts and conclusions of law."), 3.3
9 hours at \$250/hour, \$825.00; 12/17/12 ("Continue work on initial draft of the reply to Mark
10 Lebens' proposed findings of fact and conclusions of law."), 4.2 hours at \$250/hour,
11 \$1,050.00; 12/18/12 ("Continue work on reply to Mark Lebens' proposed findings of fact
12 and conclusions of law."), 7.1 hours at \$250/hour, \$1,775.00; 12/19/12 ("Continue work
13 on reply to Mark Lebens' proposed findings of facts and conclusions of law."), 3.8 hours
14 at \$250/hour, \$950.00; 12/20/12 (review and revise reply to Mark Lebens proposed
15 findings of fact and conclusions of law."), 1.9 hours at \$250/hour, \$475.00. *Application* at
16 Exhibit E-2. According to LOSRF, Attorney Park in responding to Debtor's proposed
17 findings and conclusions had to review the record again and prepare a 35-page
18 response. *Id.* at 8:18-24. The court finds that the time expended by Attorney Park in
19 preparing LOSRF's responses to Debtor's proposed findings and conclusions is
20 excessive because the issue was reasonableness of the requested fees, and the court
21 determines that the time of 10.0 hours at \$2,500.00 for Attorney Park's services in
22 preparing LOSRF's responses to Debtor's proposed findings and conclusions of law is
23 reasonable (resulting in a reduction of \$2,650.00) and may be allowed. The court has
24 allowed a larger proportion of time for Attorney Park's services in order to respond to
25 specific findings of fact and conclusions of law proposed by Debtor, which required some
26 additional effort than for LOSRF's proposed findings of fact and conclusions of law
27 regarding the reasonableness of its fees. The same concerns that the court had
28 expressed about Attorney Park's lack of experience and relative inefficiency in its prior

1 decision are applicable here. See *Separate Statement of Decision on Debtor's*
2 *Objections to Final Fee Applications of Professionals of the Estate* at Docket Entry No.
3 417 at 5-22.

4 Nonetheless, LOSRF is awarded under this ruling \$2,940.00 in fees based on
5 allowed attorney time of 11.1 hours, which is not insubstantial, and as discussed, reflects
6 the reasonable value of the work performed on this task for the estate.

7 Fees for Preparing Exhibits and Witness List: LOSRF billed 32.4 hours at
8 \$8,100.00 for Attorney Park's services in preparing exhibits, the list of witnesses and
9 exhibit register for the fee application hearings: 8/20/12 ("Begin preparation of exhibits
10 for fee application hearings."), 8.2 hours at \$250/hour, \$2,050.00; 8/21/12 ("Prepare
11 exhibits for hearing" and "Prepare service copy for Mark Lebens" and "Prepare list of
12 witnesses and exhibit register."), 6.4 hours at \$250/hour, \$1,600.00; 8/22/12 ("Continue
13 work on preparing chamber and witness copies of exhibits for fee application hearing."),
14 2.0 hours at \$250/hour, \$500.00; 8/27/12 ("Prepare list of witnesses and exhibit register
15 for filing" and "prepare proof of service."), 0.3 hours at \$250/hour, \$75.00; 8/28/12 ("Filing
16 of list of exhibits and witnesses for hearing on fee applications."), 0.4 hours at \$250/hour,
17 \$100; 9/13/12 ("Continue preparations doe fee application hearing (prepare copies of
18 exhibits)."), 2.0 hours at \$250/hour, \$500.00; 9/17/12 ("Prepare copies of exhibits for fee
19 application hearing and prepare chambers copy binder."), 1.2 hours at \$250/hour,
20 \$300.00; 9/18/12 ("Assist staff with preparation of exhibits for use at hearing on fee
21 applications."), 1.0 hour at \$250/hour, \$250; 9/19/12 ("Continue preparation of exhibits
22 for fee application hearing."), 3.9 hours at \$250/hour, \$975.00; 9/20/12 ("Continue work
23 on preparation of exhibits for fee application hearing."), 1.5 hours at \$250/hour, \$375.00;
24 9/21/12 ("Assemble exhibit binders for fee application hearings."), 5.0 hours at \$250/hour,
25 \$1,250.00; 9/21/12 ("Prepare amended exhibit register."), 0.5 hour at \$250/hour,
26 \$125.00. *Application* at Exhibit E-2.

27 LOSRF billed 5.7 hours at \$125.00 per hour for a total of \$712.50 for services of
28 Sandy Cuevas in preparing trial notebooks (i.e., exhibits). *Application*, Exhibit E-3. The

1 court determines that the time of 5.7 hours at \$712.50 for Ms. Cuevas's services in
2 preparing trial notebooks of exhibits is reasonable and may be allowed. However, the
3 court determines that Attorney Park's services in preparing exhibits, the list of witnesses,
4 and the exhibit register for the fee application hearings to be unreasonable because first,
5 the preparation of exhibits and the exhibit register is a paralegal function at most and not
6 a lawyer function and second, it should not have taken over 30 hours to identify and list
7 the exhibits, which were either pleadings and orders on the case docket, which LOSRF
8 could have simply requested the court to take judicial notice of, or copies of LOSRF's
9 monthly billing statements submitted to Debtor as the client, which should have been part
10 of the fee applications filed with the court. The court finds that the time expended by
11 Attorney Park in preparing LOSRF's trial exhibits and exhibit register is excessive
12 because these tasks were paralegal, not lawyer, functions, which the court has already
13 accounted for in allowing reasonable fees for the paralegal who prepared trial exhibit
14 notebooks, and as discussed above, it should not have taken so much time to identify
15 and list the exhibits, most of which were pleadings and orders filed in this case on the
16 case docket and monthly client billing statements, and could have been subject of a
17 request for judicial notice and/or reduced exhibit submission, and the court determines
18 that the time of 1.0 hour at \$250.00 for Attorney Park's services in preparing trial exhibits
19 and exhibit register is reasonable (resulting in a reduction of \$7,850.00) and may be
20 allowed. The same concerns that the court had expressed about Attorney Park's lack of
21 experience and relative inefficiency in its prior decision are applicable here. See
22 *Separate Statement of Decision on Debtor's Objections to Final Fee Applications of*
23 *Professionals of the Estate* at Docket Entry No. 417 at 5-22.

24 Nonetheless, LOSRF is awarded under this ruling \$962.50 in fees based on
25 allowed professional time of 6.7 hours, which is not insubstantial (i.e., almost \$1,000.00
26 just for preparing exhibits), and as discussed, reflects the reasonable value of the work
27 performed on this task for the estate.

Miscellaneous Litigation Items:

- a. LOSRF claims 0.3 hours on June 12, 2012 for Attorney Fox to prepare a notice of continued hearing on the fee applications. *Application* at Exhibit E-1 at 75. The court finds that the claimed time is excessive because a higher cost attorney is conducting this nonlegal administrative task rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.3 hours of administrative time at a legal assistant rate of \$125 per hour as reasonable (resulting in a reduction of \$82.50).
- b. LOSRF claims 0.9 hours on May 18, 2012 for Attorney Park to prepare exhibits for a declaration. *Application* at Exhibit E-2 at 79. The court finds that the claimed time is excessive because a higher cost attorney is conducting this nonlegal administrative task rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.9 hours of administrative time at a legal assistant rate of \$125 per hour as reasonable (resulting in a reduction of \$112.50).
- c. LOSRF claims 0.8 hours on May 23, 2012 for Attorney Park to prepare exhibits to an errata. *Application* at Exhibit E-2 at 81. The court finds the claimed time is excessive because a higher cost attorney is conducting this nonlegal administrative task rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.8 hours of administrative time at a legal assistant rate of \$125 per hour as reasonable (resulting in a reduction of \$100.00).
- d. LOSRF claims 0.6 hours on July 27, 2012 for Attorney Park to prepare a scheduling order for the evidentiary hearing on fee applications. *Application* at Exhibit E-2 at 84. The court finds the claimed time is excessive because a higher cost attorney is conducting this nonlegal administrative task rather than a lower cost experienced paralegal or legal assistant. The court will allow 0.6

1 hours of administrative time at a legal assistant rate of \$125 per hour as
2 reasonable (resulting in a reduction of \$75.00).

3 **III. Other Fees and Expenses**

4 Debtor also contends the \$8,520.00 in fees requested by LOSRF for other post-
5 confirmation work not related to fee application litigation is excessive. *Opposition* at 21:1-
6 10. Specifically, Debtor contends that the 25.7 billable hours spent on preparation of the
7 19-page confirmation order is excessive. *Id.* LOSRF disagrees with the Reorganized
8 Debtor's allocation of the time spent. LOSRF asserts the time spent on plan confirmation
9 also included preparing a 146-page declaration regarding the value of the debtor's
10 properties pursuant to the court's order at the plan confirmation hearing, telephone
11 conversations with the debtor and his bookkeeper regarding plan payments, and a
12 meeting with the debtor regarding post-confirmation procedures, for a total of 25.3 hours.
13 *Reply* at 6:20-7:8. LOSRF also asserts the case was complex with 22 rental properties
14 and the confirmation order contained 32 exhibits and required careful drafting to
15 effectuate lien stripping. *Id.* at 7:9-20.

16 The court has already determined in its prior memorandum decision that this
17 bankruptcy case was relatively difficult and complex, requiring lien valuation and
18 avoidance litigation for numerous properties that were only made possible through
19 extensive and protracted negotiations. *Final Fee Order* at 9:24-10:10. The court finds
20 the time spent on the confirmation order and related issues is excessive, and some
21 reductions are necessary to award a reasonable fee. Preparing the confirmation order
22 was not a difficult task on its own; the actual text of the order is only eight pages and
23 contains many standard provisions, which might be considered boilerplate. In this court's
24 estimation, it should not have taken an experienced attorney over 25 hours to prepare
25 The court further notes that some of the claimed time is also excessive because a higher
26 cost attorney is conducting nonlegal administrative tasks rather than a lower cost
27 experienced paralegal or legal assistant, such as preparing and redacting exhibits to the
28 confirmation order.

1 LOSRF billed for 15.4 hours for attorney time in preparing the proposed plan
2 confirmation order. *Application*, Exhibit D-3 at 66-69. (Although Debtor contends that
3 LOSRF billed 25.7 hours for preparing the proposed plan confirmation order, the court
4 was able to identify only 15.4 billable hours of attorney time. *Id.*) LOSRF billed 1.4 hours
5 at \$400 for Attorney Fox's services in preparing the proposed plan confirmation order:
6 5/19/12 ("Work on the plan confirmation order."), 1.3 hours at \$400/hour, \$520.00;
7 5/25/12 ("Further work on the plan confirmation order."), 0.3 hour at \$400/hour, \$120.00.
8 The court determines that the time of 1.4 hours at \$400.00 for Attorney Fox's services in
9 preparing the proposed confirmation order is reasonable and may be allowed.

10 LOSRF billed 14.3 hours at \$3,575.00 for Mr. Park's services in preparing the plan
11 confirmation order: 5/25/12 ("Work on order confirming third amended plan (as further
12 amended"), 2.4 hours at \$250/hour, \$600.00; 5/25/12 ("Prepare exhibit to order
13 confirming third amended plan showing lien stripped secured claim amounts, lien
14 stripoffs, lenders, and legal descriptions for each property."), 1.9 hours at \$250/hour,
15 \$475.00; 5/29/12 ("Meeting with SRF re: revisions to order confirming third amended plan
16 (as further amended)(SRF at no charge).", 0.9 hours at \$250/hour, \$225.00; 5/29/12
17 ("Prepare exhibits of deeds of trust and lien stripped notes for each rental properties for
18 order confirming third amended plan (as further amended)."), 2.7 hours @ \$250/hour,
19 \$675.00; 5/30/12 ("Redact and prepare exhibits to proposed order confirming third
20 amended plan (as further amended)."), 1.9 hours @ \$250/hour, 5/31/12 ("Research on
21 lien stripping and recording order confirming plan."), 0.9 hours at \$250/hour, \$225.00;
22 5/31/12 ("Revise order confirming third amended plan (as further amended"), 1.8 hours at
23 \$250/hour, \$450.00; 5/30/12 ("Revise exhibits to proposed order confirming third
24 amended plan (as further amended)."), 0.7 hours @ \$250/hour, \$175.00; 6/15/12
25 ("Telephone call from Mark Lebens re: confirmation order revisions, plan confirmation
26 issues, and related issues."), 0.2 hours @ \$250/hour, \$50.00; 6/20/12 ("Revise order
27 confirming third amended plan (as further amended"), 0.9 hours at \$250/hour, \$225.00. It
28 appears that Attorney Park spent much of his time revising the chart to the exhibit

1 regarding the treatment of the liens affected by the cramdown provisions of the plan,
2 which does not seem to the court a reasonable use of his time to bill to the estate. It
3 seems to the court that this was more a paralegal or legal assistant function which could
4 have been handled with much less time and expense by an experienced paralegal or
5 legal assistant rather than an inexperienced attorney.

6 As discussed in the prior memorandum decision, Attorney Park is a new attorney
7 and apparently still learning how to prepare proposed orders and took much more than
8 reasonably necessary to prepare LOSRF's proposed plan confirmation order. The court
9 also makes these reductions because the entries are vague as to the specific lawyer
10 tasks performed (i.e., "work on order" or "revise order"). The court determines that the
11 time of 5.0 hours at \$250.00, a total of \$1,250.00, for Attorney Park's services as an
12 attorney in preparing the proposed plan confirmation order is reasonable and may be
13 allowed. The same concerns that the court had expressed about Attorney Park's lack of
14 experience and relative inefficiency in its prior decision are applicable here. See
15 *Separate Statement of Decision on Debtor's Objections to Final Fee Applications of*
16 *Professionals of the Estate* at Docket Entry No. 417 at 5-22.

17 Moreover, the court will only allow additional time claimed for Attorney Park's
18 services as administrative time at a paralegal or legal assistant rate of \$125 per hour as
19 reasonable for the following entries:

- 20 a. May 18, 2012 - 0.9 hours claimed to prepare exhibits for the confirmation
21 declaration for an allowed fee of \$112.50 (resulting in a reduction of \$112.50).
- 22 b. May 29, 2012 – 2.7 hours claimed to prepare exhibits of deeds of trusts and
23 notes for an allowed fee of \$337.50 (resulting in a reduction of \$337.50).
- 24 c. May 30, 2012 – 1.9 hours claimed to redact and prepare exhibits to the
25 proposed confirmation order for filing for an allowed fee of \$237.50 (resulting in
26 a reduction of \$237.50).

27 *Application* at Exhibit D-3 at 66-68.

1 Accordingly, the court allows the amount of \$1,637.50 for the time spent by
2 Attorney Park in preparing the proposed plan confirmation order (resulting in a reduction
3 of \$1,937.50).

4 Finally, the court finds that a May 30, 2012 time entry for preparation of a
5 proposed order and declaration of non-opposition to the employment application of
6 Lucove Say & Co. is unreasonable because no such employment application was filed in
7 this case and the entry appears to be in error. *Id.* at Exhibit D-3 at 68. The claimed fees
8 of \$150.00 are disallowed.

9 The total reduction to fees claimed for post-confirmation work not concerning
10 litigation of the second and final fee application is \$2,087.50.

11 **IV. Reorganized Debtor's Right to Attorneys' Fees and Costs**

12 In his Opposition, Debtor requests reasonable fees and costs in litigating this third
13 fee application, arguing that there will be a benefit to the estate if he is successful.
14 *Opposition* at 12:12-13:14. LOSRF objects that Debtor has not presented any statutory
15 or contractual authority for such fees. *Reply* at 8:15-18. That statement is not entirely
16 accurate because Debtor relies on 11 U.S.C. § 330(a) for his request. *Opposition* at 13:1-
17 14. However, in order to be compensated under § 330(a), a debtor's attorney must be
18 employed pursuant to 11 U.S.C. § 327. *Lamie v. United States Trustee*, 540 U.S. at 534,
19 538-539. There is no indication that Debtor's current counsel was ever employed under
20 § 327 or even sought employment under § 327. Debtor's current counsel therefore
21 cannot be compensated pursuant to 11 U.S.C. §330(a) without prior employment
22 authorization, and this request is therefore denied.

23 **V. Conclusion**

24 For the foregoing reasons, the court determines that LOSRF should be awarded
25 professional fees and costs of **\$34,445.59** (\$29,773.50 in fees and \$4,672.09 in
26 expenses) as reasonable compensation pursuant to 11 U.S.C. § 330(a) for services
27 rendered during the period from May 17, 2012 through March 31, 2013, and the Third
28

1 and Final Application for Payment of Fees and Expenses is granted in part and denied in
2 part. This award reflects a reduction in the fees requested by LOSRF of \$33,332.50.

3 This memorandum decision constitutes the court's findings of fact and conclusions
4 of law. Applicant LOSRF is also ordered to submit a proposed final order reflecting the
5 award of fees and expenses consistent with this memorandum decision within 30 days of
6 entry of this decision.

7 IT IS SO ORDERED.

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24 Date: July 23, 2014



Robert Kwan
United States Bankruptcy Judge