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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

Morry Waksberg MD Inc

Debtor(s).

Case No.: 2:06-bk-16101-BB

CHAPTER 7

MEMORANDUM DECISION GRANTING IN PART REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM BY THE BANKRUPTCY LAW FIRM, P.C.

Date: April 1, 2015
Time: 11:00 AM
Courtroom: 1475

On January 16, 2015, The Bankruptcy Law Firm, P.C. ("BLF") filed a document that bore the following caption,

THE BANKRUPTCY LAW FIRM, PC's ("LAW FIRM") REQUEST FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE CLAIM, PER 11 USC § 503(a) AND (b)(1)(A), IN CORPORATION WAKSBERG CASE ONLY; WITH NOTICE OF HEARING WITH MEMORANDUM OF POINTS AND AUTHORITIES; WITH DECLARATION OF KATHLEEN P. MARCH, ESQ., ATTACHING ITEMIZED TIME AND COSTS, AND OTHER EXHIBITS

1 [Docket No. 716] (emphasis in original) (the "Request").

2 The Court conducted a hearing on the Request on April 1, 2015 at 11:00 a.m.
3 and entered an order granting the request in part on April 7, 2015 [docket no. 742] (the
4 "April 7 Order"). On April 7, 2015, BLF filed a document that bore the following caption,

5 **OBJECTION, OF THE**
6 **BANKRUPTCY LAW FIRM, PC, TO**
7 **TRUSTEE'S FORM OF ORDER ON LAW**
8 **FIRM'S 503 REQUEST (FORM OF**
9 **ORDER ATTACHED TO TRUSTEES**
10 **NOTICE OF LODGEMENT DOCKET ITEM**
11 **741, E-FILED AT 12:57PM**
12 **TODAY,4/7/15); LAW FIRM OBJECTS TO**
13 **TRUSTEE'S FORM OF ORDER**
14 **BECAUSE IT DOES NOT ACCURATELY**
15 **STATE THE COURT'S RULING MADE AT**
16 **4/1/15 HEARING;**
17 **LAW FIRM'S COUNTER-**
18 **PROPOSED FORM OF ORDER WAS E-**
19 **LODGED AT 4:06PM TODAY, AND IS**
20 **ATTACHED TO THIS OBJECTION AS**
21 **EXHIBIT A, FOR CONVENIENCE**

22 [Docket No. 743] (emphasis in original) (the "Objection to Order").

23 In the Objection to Order, BLF contends that the April 7 Order does not comport
24 with the Court's oral ruling at the April 1 hearing and requests that the Court enter a
25 written version of its tentative ruling into the record. The Court disagrees with BLF's
26 contention as to the accuracy of the April 7 Order and does not see the need for a
27 written version of its tentative ruling to be entered into the record. The Court read its
28 tentative ruling into the record and elaborated thereon in detail during the course of the
April 1 hearing. Moreover, the Court explicitly stated and explained its findings of fact
and conclusions of law in detail orally on the record at the time of hearing on the
Request. Nevertheless, to avoid any confusion as to the basis for the Court's April 7
Order, the Court offers this memorandum.

I

FACTUAL BACKGROUND/PROCEDURAL HISTORY

On November 21, 2006, Dr. Morry Waksberg and his wholly-owned professional corporation, Morry Waksberg M.D., Inc., filed chapter 11 petitions in the United States Bankruptcy Court for the Central District of California, commencing two separate chapter 11 cases (case nos. 06-16096-BB and 06-16101-BB, respectively). An official committee of unsecured creditors was appointed in the corporation's chapter 11 case (the "Corporate Case"), and an order authorizing the employment of BLF as counsel for the creditors' committee was entered May 1, 2007. [Docket¹ No. 144.]

The Court entered an order converting both cases to cases under chapter 7 of the Bankruptcy Code on May 24, 2007 [docket No. 178]. Alfred H. Siegel (the "Trustee") was appointed chapter 7 trustee in both cases. [Docket No. 183].

On September 27, 2007, the Court entered an order [docket no. 219] allowing BLF compensation on an interim basis of \$69,350.17 in fees and \$3,606.40 in costs for services rendered in the Corporate Case.² Thereafter, the Court approved these

¹ References to the "Docket" are to the docket in the Corporate Case.

² The majority of the compensation allowed to BLF in its capacity as counsel for the creditors' committee in the Corporate Case was for services rendered by Kathleen P. March. BLF sought and received compensation for Ms. March's services at the rate of \$400 per hour. [See BLF's First Fee Application, Docket No. 198, filed July 16, 2007.] By way of justification for this rate and its rate structure generally, BLF provided the following summary of Ms. March's qualifications and those of the other professionals then in BLF's employ:

The Bankruptcy law Firm. P.C. ["Law Firm"] is a professional corporation, registered with the California Bar, whose sole shareholder is Attorney Kathleen P. March. The Law Firm's sole business is representing debtors, creditors and other parties in interest in bankruptcy cases, motions, adversary proceedings, and in bankruptcy related matters (e.g. bankruptcy consults, expert witness work, and debt negotiation of large debts). The Law Firm was founded by Attorney Kathleen P. March when she retired [sic] from being a U.S. Bankruptcy Judge in 2002. March was a Bankruptcy Judge C.D.CA. 1988-2002. and since then has practiced bankruptcy law full time running Law Firm. March is nationally certified by the American Board of Certification as both a consumer bankruptcy law specialist and a business bankruptcy law specialist, and is certified by the State Bar of California as a bankruptcy specialist. This makes March one of the very few attorneys in the US who are TRIPLE certified as a bankruptcy specialist. March is a 1974 graduate of the Yale Law School, was a member of Board of Editors of Yale Law Journal, a former Law Clerk to a U.S. District Judge, S.D. NY, a former Federal prosecutor, Central District of California. March has extensive experience in federal and state business litigation, including bankruptcy litigation. March has taught bankruptcy for various bar groups, has published articles on Bankruptcy and is a co-author of the upcoming multi-volume Rutter Group Bankruptcy Practice Guide, set for publication in 2007, and teaches for Rutter group and various other legal education providers, on bankruptcy. March's hourly rate of \$400 hour is extremely reasonable given her credentials and experience; far below market in

1 amounts on a final basis by order entered September 23, 2008 [docket no.345] and
2 authorized payment of 50 percent of the fee award by order entered March 30, 2009
3 [docket no. 466]. BLF received this partial payment and retained an unpaid allowed
4 chapter 11 expense of administration claim for \$36,478. Declaration of Kathleen P.
5 March filed in support of the Request (the "March Declaration"), p. 24, at par. 24.

6 On November 24, 2008, Dr. Waksberg filed an amended Schedule C in which
7 he, for the first time, claimed exemptions in certain settlement funds held by his
8 bankruptcy estate. The Trustee objected to these exemptions, and amended versions
9 of these exemptions, on December 29, 2008. The Trustee later filed objections to
10 certain secured claims that had been advanced by Dr. Waksberg's mother, Ida
11 Waksberg, in both bankruptcy cases.

12 After years of protracted litigation and multiple mediation sessions, Dr. Waksberg
13 and the Trustee eventually negotiated a compromise of their respective disputes. The
14 Trustee moved for approval of that compromise in the individual case on February 7,
15 2014. On February 12, 2014, the Trustee moved for substantive consolidation and joint
16 administration in both cases. [Docket No. 682 in the Corporate Case.] BLF filed a
17 combined objection to both motions (jointly, the "Motions") that bore the following
18 caption,

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26 Los Angeles area. The hourly rate for the Law Firms's paralegals of \$150 per hour for the paralegal who is
27 a law school graduate of Thomas Jefferson School of Law (an ABA accredited law school), and \$75 an
28 hour for the paralegal with approximately 20 years of experience as a bankruptcy paralegal is extremely
reasonable, and is below market for similarly qualified paralegals in the Los Angeles area. The paralegal
Law Firm bills at \$75 per hour is a graduate of 4 year business college in the Phillipines, and took courses
at LACity College in bookkeeping.

BLF's July 2007 Fee Application, at pp. 6-7.

1
2 **OPPOSITION OF THE BANKRUPTCY**
3 **LAW FIRM, PC (“LAW FIRM”): (1) TO**
4 **CHAPTER 7 TRUSTEE’S MOTION FOR**
5 **SUBSTANTIVE CONSOLIDATION OF**
6 **CORPORATE CASE (MORRY WAKSBERG**
7 **M.D., INC.) AND INDIVIDUAL CASE (MORRY**
8 **WAKSBERG, M.D.); and (2) TO TRUSTEE’S**
9 **PROPOSED EXEMPTION SETTLEMENT WITH**
10 **WAKSBERG BEING PAID FROM**
11 **CORPORATION ASSETS; MEMORANDUM OF**
12 **POINTS AND AUTHORITIES; DECLARATION**
13 **OF KATHLEEN P. MARCH.**

14 [Docket No. 685] (emphasis in original) (the “Original Opposition”). In the Original
15 Opposition, BLF argued that the Trustee had failed to make the showing necessary to
16 demonstrate that substantive consolidation was permissible or appropriate and objected
17 to the compromise to the extent that the Trustee intended to use funds obtained from
18 the corporate estate (made available only by virtue of substantive consolidation) to pay
19 amounts due under the compromise.

20 By the time BLF filed the Original Opposition, its services as counsel for the
21 Creditors’ Committee had been completed, and BLF was acting solely on its own behalf,
22 in its capacity as a chapter 11 administrative claimant. BLF emphasized this point
23 during oral argument on the Motions and offered clear evidence of its intent in the
24 manner in which it drafted Section IV of the Original Opposition, which begins as
25 follows:
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1 IV. IF TRUSTEE/TRUSTEE'S PROFESSIONALS, AND/OR DR.
2 WAKSBERG, WANT TO SUBSTANTIVELY CONSOLIDATE THE
3 CORPORATE AND INDIVIDUAL WAKSBERG CASES, OR WANT TO
4 HAVE THE 1.6 MILLION DOLLAR EXEMPTION SETTLEMENT
5 APPROVED, THE SOLUTION IS FOR TRUSTEE, AND HIS
6 PROFESSIONALS, TO MAKE A "CARVE OUT" OF THEIR OWN FEES
7 (WHICH APPARENTLY WILL BE AROUND 1 MILLION DOLLARS) AND
8 USE THE CARVED OUT AMOUNT TO PAY, IN FULL, THE
9 BANKRUPTCY LAW FIRM'S \$72,956 OF ALLOWED FEES/COSTS;
10 AND/OR FOR DR. WAKSBERG TO PAY THOSE FEES FROM THE 1.6
11 MILLION DR. WAKSBERG [sic] WOULD RECEIVE IF THE
12 EXEMPTION SETTLEMENT IS GRANTED AND IS PAID USING
13 CORPORATE ASSETS

9 The only way the Court could properly grant substantive consolidation, or
10 approve the 1.6 million dollar Waksberg proposed exemption settlement, is to
11 eliminate the prejudice that granting those things will cause to The Bankruptcy
12 Law Firm, PC.

12 Trustee/Trustee's professionals, and/or Dr. Waksberg, can eliminate the
13 prejudice to The Bankruptcy Law Firm, PC by paying Law Firm's finally
14 allowed \$72,956 of fees/costs.

15 * * * *

16 Trustee/Trustee's professionals, and/or Dr. Waksberg paying Law Firm
17 its finally allowed but unpaid fees, is the only way to keep Law Firm from
18 being improperly prejudiced by the substantive consolidation that Trustee
19 seeks, and to keep Law Firm from being improperly prejudiced by Trustee using
20 corporate case assets to pay the 1.6 million proposed exemption to Dr.
21 Waksberg, events which would result in Law Firm's allowed Chapter 11
22 fees/costs NOT being paid, when they would be paid, absent substantive
23 consolidation, and absent approving a settlement that provides to pay 1.6 million
24 exemption to Waksberg from corporate case assets. Trustee's proposed actions
25 would admittedly leave the consolidated cases insolvent at the Chapter 11
26 level. (March Decl) .

23 There are two simple ways to get Law Firm paid, which are:

24 **Alternative (1):** Trustee, and his professionals, can agree to a "carve out"
25 (reduction) of their own fees (which apparently will be around 1 million dollars) of
26 enough to allow the bankruptcy law firm's allowed \$72, 956 of fees/costs to be
27 paid in full, on a final basis. . . . If and only if the \$36, 478, already paid to Law
28 Firm on an interim basis, is deemed by the Court to be a final payment, not
subject to recapture, then the Chapter 7 professionals together only need "carve
out" \$36,478 from the Chapter 7 fees/costs they have already been paid, and will
in future be seeking, and have the Court order that additional \$36,478 to be

1 **paid to The Bankruptcy Law Firm, PC, on a final basis, upon Final Report,**
2 **at the same time Trustee and Trustee's professionals are paid their allowed**
3 **fees/costs.**

* * * *

4 **Alternative (2)**: Instead of Alternative (1), or in combination with
5 Alternative (1), Dr. Waksberg can agree to pay Law Firm its' [sic] \$72,956 of
6 allowed Chapter 11 administrative fees/costs, as a "carve out" from the **1.6**
7 **million** that Dr. Waksberg will receive, if and only if the exemption settlement is
8 granted and paid using corporate case assets.

9 Original Opposition, pp. 10-12 (emphasis in original).

10 The Court overruled the Original Objection and granted both of the Motions. BLF
11 appealed to the Bankruptcy Appellate Panel. BLF moved in the bankruptcy court for a
12 stay pending appeal [docket no. 699]. The bankruptcy court denied that motion by
13 order entered March 18, 2014 [docket no. 705]. BLF renewed its motion for a stay
14 pending appeal before the BAP, and that motion was granted [docket no. 709]. In an
15 unpublished opinion filed October 15, 2014 [docket no. 712] (the "BAP Opinion"), the
16 BAP affirmed this Court's order approving the compromise motion, but vacated its order
17 substantively consolidating the two bankruptcy estates (the "Substantive Consolidation
18 Order") and remanded for further proceedings.

19 Following the successful conclusion of a portion of its appeal, BLF filed motions
20 in each of the bankruptcy cases seeking allowance and payment of a chapter 7
21 administrative claim. (It is unclear why motions were filed in both cases, as both
22 motions made clear that BLF was only seeking an allowance in the Corporate Case.
23 [See, e.g., Request, Docket No. 716, filed January 21, 2015, p. 2, lines 9-10 ("This
24 RAPAdminClaim is made solely in the corporation Waksberg case, case no. 2:06-bk-
25 16101-BB."))] The Trustee objected to the Request. [Docket No. 718.] The Court
26 conducted a hearing on the Request on April 1, 2015.
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1 In the Request, BLF sought payment of fees and expenses of \$172,580.28,
2 consisting of attorneys' fees of \$168,506.68 and costs of \$4,073.60, broken down as
3 follows:³

4 Category	Amount
5 Opposing motion for substantive consolidation	\$21,200.01
6 Appeal to BAP	\$111,239.99
7 Two motions for stay pending appeal	\$18,600.01
8 Researching, preparing and filing 503(b) motion	\$17,466.67 ⁴

9 The Request does not include a recapitulation or summary of the number of
10 hours billed at each hourly billing rate, but a review of Exhibit B to the Request reflects
11 that the majority of the entries are for services rendered by Kathleen P. March for which
12 BLF seeks compensation at the rate of \$800 per hour. Several entries on Exhibit B are
13 for services performed by a "Jr atty" at \$400 per hour. The Court has calculated based
14 on its review of Exhibit B that charges attributable to this junior attorney total
15 \$24,453.33, which sum equates to approximately 61.13 hours. As the only other
16 charges on Exhibit B are billed at the rate of \$800 per hour, the Court estimates that
17 Exhibit B includes total charges attributable to services rendered by Kathleen P. March
18 of approximately \$144,053.35, which equates to approximately 180 hours.

19 Although Exhibit B does not disclose the name of the junior attorney who
20 performed services in this matter, according to paragraph 23 of the March Declaration,
21 this attorney is Stephanie Santana, who was admitted to the bar on December 21, 2010
22 and, since that time, has practiced law full time at BLF. (Prior to becoming an attorney,
23 Ms. Santana worked as a paralegal at BLF.) The Court takes judicial notice of the fact
24 that, according to the website maintained by the State Bar of California: (1) Ms.
25 Santana attended the University of West Los Angeles School of Law; and (2) the
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27 ³ These amounts are in addition to the unpaid portion of BLF's final chapter 11 fee allowance of \$36,478.

28 ⁴ In addition to these amounts, BLF requested in its reply to the Trustee's opposition to the Request an additional \$30,077 for preparing the reply, bringing the total fees and costs that BLF seeks to recover for its efforts to collect \$36,478 claim to \$202,657.28.

1 University of West Los Angeles School of Law is not an ABA Accredited Law School.
2 (The University of West Los Angeles School of Law has been accredited by the
3 California Committee of Bar Examiners, however.)

4 In the Request, BLF advances two independent bases for its requested
5 allowance: (1) the plain language of Bankruptcy Code section 503(b); and (2) the
6 “fundamental fairness” doctrine announced in Reading Co. v. Brown, 39 U.S. 471, 88
7 S.Ct. 1759, 20 L.Ed. 2d 759 (1968). The Court will address these arguments in reverse
8 order.

9
10 **II**
DISCUSSION

11 **A. BLF is not Entitled to an Award of Fees under a Reading Co. v. Brown.**

12 BLF’s argument for an award based on Reading v. Brown must be dismissed out
13 of hand. As BLF correctly notes in the Request, the Supreme Court in that case
14 granted an administrative expense claim to Reading Company when its building was
15 burned down post-petition by a fire that started in the debtor’s building due to the
16 negligence of an agent of the receiver who was in charge of the debtor. Request, p. 11,
17 lines 16-20. The lower courts had struggled with allowance of the claim, as no benefit
18 had been conferred on the estate. Nevertheless, the Supreme Court allowed the claim
19 on the theory that it would unfair to relieve the estate from liability for a post-petition tort
20 claim.

21 Courts in rare instances have applied the Reading doctrine more broadly to
22 permit a prevailing party to recover attorneys’ fees for defending against wrongful action
23 by a trustee, but no court has turned the Reading doctrine into a free-wheeling
24 prevailing party attorneys’ fee clause, as BLF attempts to do here. Although it reversed
25 the Substantive Consolidation Order, the BAP did not find that the Trustee engaged in
26 improper conduct by prosecuting the motion that requested that order. It cannot be the
27 case that, whenever a bankruptcy court order granting a trustee’s motion is reversed on
28 appeal, the successful appellant is entitled to attorneys’ fees under Reading v. Brown.

1 Such an approach would turn the American Rule⁵ on its head. Thus, the Court denied
2 BLF's request for an award under Reading v. Brown.

3 B. BLF (Unintentionally) Conferred a Substantial Benefit on Unsecured
4 Creditors in the Corporate Case.

5 Although BLF objected to the Motions solely on its own behalf and not on behalf
6 of the corporation's creditors generally – *BLF expressly invited the Trustee in the*
7 *Original Opposition to resolve BLF's objection by simply paying the unpaid portion of its*
8 *allowed chapter 7 administrative claim* -- the end result of BLF's appeal of the
9 Substantive Consolidation Order was reversal of that order. Absent reversal of the
10 Substantive Consolidation order, there would have been no distribution to creditors in
11 either Dr. Waksberg's individual case or the Corporation's case. BAP Opinion, p. 23,
12 lines 27-28, p. 24, lines 1-2. Because of this reversal, at least an additional \$1.6 million
13 remains in the corporate estate that the Trustee would otherwise have paid to the
14 debtor – a substantial increase in the funds available for the payment of claims in the
15 Corporate Case. In light of this increase, there will now be sufficient funds in the
16 Corporate Case to pay not only chapter 7 and 11 administrative claimants, but also to
17 make a distribution to the holders of unsecured claims.⁶ Based on this analysis, the
18 Court found that BLF was entitled to an award of attorneys' fees and costs under
19 section 503(b), as it made a substantial contribution to the corporate estate.

20 Yet the BAP Opinion describes the dispute over the propriety of substantive
21 consolidation as being “among Dr. Waksberg and administrative claimants only,” BAP
22 Opinion, p. 24, lines 2-4. It is possible, therefore, that the Panel intended to
23 communicate that, but for BLF's opposition, substantive consolidation would have been
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25 ⁵ The “American Rule” as used here refers to the fact that, in the United States, the prevailing litigant is ordinarily
26 not entitled to collect attorneys' fees from the losing party, absent a contract or a statute that authorizes an award of
27 such fees. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 95 S.Ct. 1612 (1975).

28 ⁶ BLF has made this assertion, and the Trustee has not disputed it. The Court expressly relied on this assumption in
ruling on the Request. If, on the other hand, there will be no funds available for unsecured creditors in the
Corporate Case even if the two estates remain separate, this Court's conclusion that BLF rendered a substantial
benefit to unsecured creditors in the Corporate Case by prevailing in its appeal of the substantive consolidation order
is in error and should be reversed.

1 permissible on these facts. See BAP Opinion, p. 3, lines 1-4 (the order granting
2 substantive consolidation was “inconsistent with the standard adopted by the Ninth
3 Circuit . . . *in the face of substantial opposition from an interested party*”) (emphasis
4 added), & p. 25, lines 21-23 (payment of Dr. Waksberg’s exemption claim from
5 corporate assets “is not equitable and does not support substantive consolidation in this
6 case *in the face of the Law Firm’s opposition*”) (emphasis added).

7 Perhaps the BAP assumed that, on remand, the bankruptcy court would order
8 payment of BLF’s unpaid chapter 11 administrative claim and thereafter enter a new
9 order granting substantive consolidation. But would such a result be permissible in light
10 of language in the BAP Opinion, explaining that consolidation must benefit all creditors
11 and is rarely if ever appropriate where creditors will see no direct financial benefit from
12 the consolidation? On page 24 at lines 23 through 26, the BAP appears to hold that,
13 where, as here, creditors will receive nothing from substantive consolidation in terms of
14 distributions, the second factor of Alexander v. Compton (In re Bonham), 229 F.3d 750
15 (9th Cir. 2000), cannot be satisfied. How would payment to BLF of the unpaid portion of
16 its chapter 11 administrative claim change this result? Should substantive consolidation
17 be approved on facts that would not otherwise warrant this result so long as any creditor
18 who previously complained about substantive consolidation is “bought off?” It would
19 seem not.

20 Therefore, the Court advised the parties at the hearing on the Request that, in
21 light of the BAP Opinion, the Court does not believe that it may substantively
22 consolidate the estates, even if BLF were to withdraw its objection.⁷ If this Court has

23 _____
24 ⁷ Based on Judge Bluebond’s interpretation of the BAP Opinion, the Waksberg bankruptcy cases threatens to
25 become a modern day version of *Jarndyce v. Jarndyce*, the litigation in Charles Dickens’ Bleak House, except that,
26 in this instance, the outcome of the litigation could be even more bleak. *Jarndyce v. Jarndyce* eventually ends when
27 the entire probate estate has been depleted by the costs of prolonged litigation and there is nothing left to fight about.
28 Here, even this avenue of escape is unavailable. Dr. Waksberg asserts the right to an exemption. His mother claims
a security interest in funds held by the estate. Even when the trustee’s fees exceed the balance in the estate, the
debtor and his mother will continue to assert that they have a prior claim to amounts that were paid to professionals
and that there should be a disgorgement. Although the BAP affirmed the bankruptcy court’s order approving the
compromise, the trustee contends that substantive consolidation of the estates was a necessary condition of the
compromise and, therefore, that the compromise is no longer binding, as he no longer has access to the funds
necessary to make the payments required by the compromise. The debtor, on the other hand, contends that the

1 read the BAP Opinion inaccurately and the Panel intended to communicate that
2 substantive consolidation will be permissible once BLF receives payment of its chapter
3 11 administrative claim, then this Court's conclusion that BLF is entitled to an award
4 under section 503(b) is erroneous and should be reversed. In that event, nothing in the
5 BAP Opinion provides a benefit to creditors generally, and BLF, by filing its opposition
6 and appeal, accomplished nothing more than its original objective -- to ensure that it
7 received payment of its own claim -- and did not render a benefit of any kind to
8 unsecured creditors.

9 C. The Fees Sought in Exhibit B are Grossly Inflated.

10 Having found that BLF provided a substantial benefit to the estate by prevailing
11 on its appeal of the Substantive Consolidation Order, the Court then turned to an
12 analysis of the amount of the award that BLF should receive for having conferred this
13 benefit. BLF offered Exhibit B to the Request to support its request for an award of
14 \$172,580.28. However, there are numerous problems with Exhibit B:

- 15 ■ it seeks compensation at hourly rates that are excessive;
- 16 ■ it is replete with descriptions of services that are secretarial in
17 nature or are otherwise part of an attorney's overhead;
- 18 ■ it includes charges for services that were not necessary to preserve
19 the estate; and
- 20 ■ the number of hours spent was excessive for the services provided.

21 When a professional person seeks an allowance of the actual and necessary
22 costs that it incurred in preserving the estate, a court must evaluate the nature, extent
23 and value of the services. In so doing, it should examine "all relevant factors,"
24 including: (1) time spent on the services; (2) rates charged for the services; (3) whether
25 the services were: (i) necessary to the administration of the bankruptcy case; or (ii)

26
27 trustee should dip into his pocket and/or disgorge funds that he has already received, if necessary, to pay amounts
28 due the debtor and his mother under the compromise. Fortunately, as she has just been reappointed to a second 14-
year term as a bankruptcy judge for the Central District of California and plans to seek reappointment for additional
terms thereafter, Judge Bluebond hopes to remain on the bench long enough to see this matter through to its
completion.

1 beneficial at the time the services were rendered toward completion of the case; (4)
2 whether the services were performed within a reasonable amount of time
3 commensurate with the complexity, importance and nature of the problem, issue or task
4 addressed; (5) with respect to a professional person, whether the person is board
5 certified or has otherwise demonstrated skill and experience in the bankruptcy field; and
6 (6) whether the compensation is reasonable based on the customary compensation
7 charged by comparably skilled practitioners in nonbankruptcy cases. See 11 U.S.C. §
8 330(a)(3).

9 A bankruptcy court has broad discretion to determine the number of hours
10 reasonably expended. Wechsler v. Macke Int'l Trade, Inc. (In re Macke Int'l Trade,
11 Inc.), 370 B.R. 236, 254 (Bankr. 9th Cir. 2007). "[E]ven where evidence supports [that]
12 a particular number of hours [were] worked, the court may give credit for fewer hours if
13 the time claimed is 'excessive, redundant, or otherwise unnecessary.'" Id. (quoting
14 Dawson v. Wash. Mut. Bank, F.A. (In re Dawson), 390 F.3d 1139, 1152 (9th Cir. 2004).
15 With respect to the hourly rate, a bankruptcy court is not required to "assume that the
16 rate charged [is] the appropriate lodestar rate only because it was the rate actually
17 charged." See Dawson, 390 F.3d at 1152 (emphasis in original).

18 a. The Hourly Rates Charged in Exhibit B are Excessive

19 Although the fees incurred by counsel employed by a committee in
20 a bankruptcy case will be paid from the bankruptcy estate, it is at least theoretically
21 possible that something akin to an arms-length negotiation may have occurred between
22 the committee and its prospective counsel on the subject of hourly rates before the
23 committee decided to hire that particular attorney. Therefore, the hourly rate that the
24 parties have mutually agreed upon could conceivably offer at least some indication of
25 the rate of compensation that the chosen professional, based upon his or her reputation
26 in the community, is able to command in the marketplace. The Court has no way to
27 determine whether the fees originally charged by BLF in the Corporate Case⁸ were or
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⁸ As discussed supra at note 2, in its capacity as counsel for the committee in the Corporate Case, BLF charged \$400

1 were not the product of such an arms-length negotiation, but the Court knows to a
2 certainty that no such negotiation occurred as to the hourly rates that BLF seeks to
3 charge on Exhibit B. BLF made perfectly clear in the Original Opposition that it was not
4 acting on anyone's behalf other than its own. No evidence has ever been offered that
5 anyone agreed to pay BLF the hourly rates reflected on Exhibit B. These rates were
6 selected unilaterally by BLF and its professionals. It is this Court's view that those rates
7 are excessive.

8 An attorney first admitted to the bar slightly more than 4 years ago,
9 who attended a law school not accredited by the ABA and has only worked as an
10 attorney (and previously as a paralegal) for BLF is not someone who should be billed at
11 \$400 per hour. She is still a junior attorney whose credentials do not justify an hourly
12 rate comparable to that charged by attorneys with far more impressive resumés who
13 have practiced in this field for many more years than she. Moreover, the nature of the
14 work she performed, as reflected on Exhibit B and discussed in more detail below, more
15 closely resembles secretarial services than it does work for which anyone should be
16 expected to pay \$400 per hour.

17 Equally inflated is the hourly rate that BLF has elected to charge for
18 services rendered by Kathleen P. March. Although Ms. March attended prestigious
19 universities and is beyond dispute an intelligent woman, there is more to being a
20 bankruptcy lawyer worth \$800 per hour than a demonstrated ability to pass certification
21 examinations.⁹ Ms. March served as a bankruptcy judge in the Central District of
22 California from 1988 until 2002, when her request for reappointment was declined and
23 she left the bench to open her own law firm. Prior to taking the bench, she had never
24 practiced as a bankruptcy attorney and had little, if any, prior experience in the
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26 per hour for the services of Kathleen P. March, \$150 per hour for a paralegal who graduated from Thomas Jefferson
27 School of Law (which, unlike the University of West Los Angeles School of Law, *is* an ABA accredited law
28 school), and \$75 per hour for a paralegal who went to business college in the Philippines.

⁹ At various points during oral argument and in her papers, Ms. March has noted that she is "triple certified" as a
bankruptcy specialist, in that she has passed the State Bar of California's bankruptcy specialist examination and the
American Board of Certification's consumer bankruptcy and business bankruptcy specialist examinations.

1 bankruptcy field. Since leaving the bench, she has practiced only at her own firm. (See
2 supra, note 2.) Consequently, she has never had the benefit of the training and
3 mentoring that would have occurred if she had begun her bankruptcy career under the
4 supervision of a trained bankruptcy professional. And, as this court is well aware, the
5 experience that one receives as a sitting bankruptcy judge is very different from the
6 experience that one obtains by actually practicing in the field.

7 Although Ms. March has significant substantive knowledge in the
8 bankruptcy field, she lacks the judgment and advocacy skills that a bankruptcy lawyer
9 worth \$800 must have. She submits briefs that shout at the reader with bold face type
10 and underlined text and drafts captions and titles that are excessively long and
11 argumentative. She insults and threatens the trier of fact while at the podium during
12 oral argument and lacks the judgment to know when it would be in her client's best
13 interest not to advance a particular argument, objection or position. She is not a
14 nationally recognized expert in the field who is highly regarded by her professional
15 peers and the bankruptcy community at large. Thus, in the view of this Court, BLF
16 should not be compensated for Ms. March's services at the rate of \$800 per hour.

17 Moreover, attorneys who bill at \$800 or more per hour do not
18 perform all of the services required for a client in a given case at this hourly rate. They
19 cannot. The resulting fees would be exorbitant. They have other professionals at their
20 firms who perform the bulk of the services at a lower hourly rate, or they keep their
21 hourly rates lower so that they can perform these services themselves without the
22 assistance of others. They limit the services that they provide at a high hourly rate to
23 such higher level tasks as reviewing work done by others; arguing hotly contested
24 matters; consulting on strategy issues; and handling important meetings and
25 negotiations, etc. They do not sit at the computer doing research and drafting pleadings
26 or assembling excerpts of the record on appeal.

27 For all of these reasons, the Court concluded that \$400 was an
28 appropriate hourly rate for services rendered by Ms. March in this matter. Ms. March

1 argued that this was the rate that she had agreed to accept when she was originally
2 employed in this case in 2007 and that inflation alone should mean she is entitled to a
3 higher hourly rate now. The Court noted that there was no evidence in the record to
4 suggest that hourly rates for bankruptcy attorneys have doubled since 2007 and
5 rejected this argument.

6 b. Exhibit B Includes Charges that are Secretarial in Nature or
7 Otherwise Not Compensable.

8 Exhibit B include numerous instances of charges that are
9 secretarial in nature or otherwise noncompensable, such as entering matters into the
10 firm's calendaring system, searching Pacer to locate documents, preparing a table of
11 contents and a table of authorities, efilng documents, completing a transcript order form
12 and reviewing the Court's self-calendaring system to figure out when to set a hearing.

13 The following is a partial list of such charges:

- 14 • February 18, 2014 -- 2.33 hours billed at \$400 per hour for preparing table of
15 contents and table of authorities to attach to Original Opposition
- 16 • February 18, 2014 -- 0.67 hours billed at \$400 per hour for efilng and serving
17 Original Opposition
- 18 • March 10, 2014 -- 1.50 hours billed at \$800 per hour for preparing notice of
19 appeal
- 20 • March 10, 2014 -- 0.17 hours billed at \$400 per hour for efilng notice of appeal
- 21 • March 11, 2014 -- 0.25 hours billed at \$400 per hour for preparing transcript
22 order form
- 23 • March 11, 2014 -- 0.17 hours billed at \$400 per hour for preparing notice of
24 transcript and proof of service and efilng documents
- 25 • March 14, 2014 -- 0.75 hours billed at \$400 per hour for preparing table of
26 contents and table of authorities to attach to motion for stay pending appeal
- 27 • March 14, 2014 -- 0.42 hours billed at \$400 per hour for preparing proof of
28 service and efilng motion for stay pending appeal

- 1 • March 17, 2014 -- 2.00 hours billed at \$400 per hour for assembling appendix to
2 be affixed to motion for stay pending appeal to be filed with BAP
- 3 • March 17, 2014 -- 0.33 hours billed at \$400 per hour for preparing proof of
4 service and efilng motion for stay pending appeal with BAP
- 5 • March 18, 2014 -- 0.25 hours billed at \$400 per hour for preparing proof of
6 service and efilng supplement to motion for stay pending appeal with BAP
- 7 • March 21, 2014 -- 3.83 hours billed at \$800 per hour for preparing designation of
8 record on appeal
- 9 • March 24, 2014 -- 0.33 hours billed at \$400 per hour for preparing proof of
10 service and efilng statement of issues on appeal
- 11 • March 24, 2014 -- 1.00 hours billed at \$800 per hour for preparing designation of
12 record on appeal
- 13 • March 24, 2014 -- 0.55 hours billed at \$400 per hour for preparing proof of
14 service and efilng designation of record on appeal
- 15 • March 26, 2014 -- 0.17 hours billed at \$400 per hour for preparing proof of
16 service and efilng reply to opposition to motion for stay pending appeal with BAP
- 17 • April 16, 2014 -- 7.00 hours billed at \$400 per hour for assembling documents to
18 be included as excerpts of record on appeal
- 19 • April 17, 2014 -- 6.00 hours billed at \$400 per hour for assembling documents to
20 be included as excerpts of record on appeal
- 21 • April 18, 2014 -- 7.00 hours billed at \$400 per hour for assembling documents to
22 be included as excerpts of record on appeal
- 23 • April 21, 2014 -- 6.00 hours billed at \$400 per hour for assembling documents to
24 be included as excerpts of record on appeal
- 25 • April 22, 2014 -- 5.00 hours billed at \$400 per hour for adding excerpt of record
26 cites to appellant's opening brief on appeal
- 27 • April 23, 2014 -- 3.00 hours billed at \$400 per hour for checking cites in
28 appellant's opening brief on appeal

- 1 • April 23, 2014 -- 4.83 hours billed at \$800 per hour for reviewing table of
2 contents, excerpts of record, and appellant's opening brief on appeal
- 3 • April 23, 2014 -- 0.33 hours billed at \$800 per hour for preparing cover pages to
4 excerpts of record on appeal
- 5 • April 23, 2014 -- 1.67 hours billed at \$800 per hour for preparing instructions for
6 federal express retrieval and copying of excerpts of record on appeal
- 7 • April 24, 2014 -- 3.50 hours billed at \$400 per hour for preparing table of contents
8 and table of authorities to attach to appellant's opening brief on appeal
- 9 • April 25, 2014 -- 0.25 hours billed at \$400 per hour for preparing proof of service
10 and efileing appellant's opening brief on
- 11 • April 28, 2014 -- 0.58 hours billed at \$800 per hour for picking up documents at
12 FedEx, paying for it and instructing junior attorney how to file appellant's opening
13 brief and excerpts of record on appeal
- 14 • May 26, 2014 -- 6.00 hours billed at \$400 per hour for adding excerpt of record
15 cites to appellant's reply brief on appeal
- 16 • May 26, 2014 -- 2.25 hours billed at \$800 per hour for checking excerpt of record
17 cites to appellant's reply brief on appeal
- 18 • May 28, 2014 -- 0.25 hours billed at \$400 per hour for preparing proof of service
19 and efileing; appellant's opening brief on BAP
- 20 • October 21, 2014 -- 0.08 hours billed at \$400 per hour for finalizing bill of costs
21 and preparing proof of service and efileing appellant's bill of costs on appeal
- 22 • November 3, 2014 -- 0.08 hours billed at \$400 per hour for preparing proof of
23 service and efileing appellant's reply to opposition to bill of costs on appeal.

24 The Court has therefore excluded the above charges, and charges for similar services,
25 from its calculation of an appropriate award for BLF.

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1 c. Exhibit B Includes Charges that are Excessive, Redundant or
2 Otherwise Unnecessary.

3 Also included within the Request are entries for services rendered
4 that were not necessary to the benefit conferred and entries for excessive amounts of
5 time spent on services that would otherwise be compensable. This court reviews fee
6 statements regularly, has extensive knowledge of the issues in dispute in this case and
7 is in an excellent position to evaluate how long it should have taken BLF to perform the
8 services for which it is entitled to compensation in this matter. For example, although
9 BLF included 7 hours on Exhibit B for preparing its first motion for stay pending appeal,
10 it then included an additional 5 hours for preparing a substantively identical motion with
11 the BAP. BLF then billed an additional 34 hours to prepare the opening brief on appeal,
12 which advanced the identical arguments in a somewhat modified fashion, and an
13 additional 22.5 hours to prepare the reply brief, which contained the same arguments
14 from the stay motion and opening brief. It is inappropriate for an attorney to charge
15 repeatedly for reinventing the wheel, when all he actually did was dust off and polish up
16 an existing one over and over and over.

17 BLF also included significant charges for researching issues such
18 as procedures in the Central District for filing emergency motions, when these
19 procedures are clearly spelled out in the Court's local rules and Court manual, and
20 multiple charges for preparing for oral arguments at which it argued the same issues
21 repeatedly. Further, BLF has included charges for the cost of advancing the argument
22 that the trustee's conduct can be described as tortious, entitling it to compensation
23 under Reading v. Brown. This argument borders on the frivolous and should never have
24 been included.

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1 Exhibit B also reflects charges for preparing a settlement offer to
2 the trustee, which does not constitute a service rendered for the benefit of creditors and
3 cannot be characterized as a cost of preserving the estate. Once these inappropriate
4 charges are deducted from Exhibit B, the compensation that should be allowed to BLF
5 is reduced considerably.

6 III

7 CONCLUSION

8 After reviewing the charges reflected on Exhibit B, and assessing the tasks that
9 were actually necessarily performed for the benefit of creditors, and eliminating any
10 charges that the Court considered excessive, redundant, unnecessary or otherwise not
11 compensable, the Court calculated that the Request should be allowed in the following
12 amounts for the following services:¹⁰

- 13 • Preparing and arguing objections to the substantive consolidation portions
14 of the Motions -- 15 hours @ \$400/hr = \$6,000;
- 15 • Preparing and arguing portions of appeal that related to substantive
16 consolidation – 30 hours @ \$400/hr = \$12,000;
- 17 • Preparing and arguing motions for stay pending appeal – 20 hours @
18 \$400/hr = \$8,000.

19 TOTAL FEES: \$26,000.

20 BLF also requested compensation for the fees incurred in bringing the Request
21 itself. The Court asked whether BLF had any authority for the proposition that such fees
22 were compensable in a fact pattern in which a professional is seeking compensation for
23 the value of a benefit conferred and not acting in the capacity as a professional
24 employed by the estate. BLF responded that it had no such authority. The Court
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26 ¹⁰ For ease of calculation, the Court has allowed all of these fees the rate of \$400 per hour. However, the Court
27 expects that a significant portion of the actual drafting of motions and briefs should have been done by someone
28 whose hourly rate was even less than this amount. In this instance, the Court characterized the fees allowed as 65
hours at the rate of \$400 per hour. Had it insisted that at least half of the services be rendered by a professional with
a lower hourly rate, as an appropriate rate for Ms. Santana would not exceed \$200 per hour, \$26,000 in fees would
translate into a total of 87 hours, half at \$200 per hour and half at \$400 per hour.

1 therefore denied BLF compensation for the \$47,543.67 in fees that it sought in
2 connection with prosecution of the Request.¹¹

3 With regard to BLF's out-of-pocket costs, when this issue was raised at the April
4 1 hearing, the Court was initially inclined to grant BLF the \$4,073.60 in costs reflected
5 on Exhibit B. However, during the course of oral argument, BLF conceded that the
6 \$800 in costs allowed by the BAP were included within this figure and, therefore, that an
7 allowance in the full amount requested on Exhibit B would be duplicative. The Court
8 therefore reduced these costs by the amount of the duplication and allowed costs of
9 \$3,237 (\$4,073.60 minus \$800), bringing the total amounts allowed to BLF under
10 section 503(b) to \$29,237. The Court believes that an award of \$29,237 is more than
11 adequate to compensate BLF for services rendered that may have resulted in a benefit
12 to unsecured creditors generally. This Court's April 7, 2015 order allows BLF fees and
13 expenses in this amount.

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25 Date: April 20, 2015


26 Sheri Bluebond
27 United States Bankruptcy Judge

28 ¹¹ Should an appellate court conclude that this decision was in error and that BLF is in fact entitled to compensation for the fees associated with preparing and arguing the Request, the Court hereby finds that the actual and necessary costs that should be allowed for bringing the Request are an additional 10 hours at \$400 per hour, or \$4,000.