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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re  
MACCA CORPORATION,  
  
Debtor,

BK. NO. LA 03-18806 SB  
  
Chapter 11  
  
FINDINGS RE DEBTOR'S MOTION TO  
PAY RETAINERS TO COUNSEL FROM  
DIP FUNDS  
  
DATE: March 7, 2006  
TIME: 11:00 a.m.  
CRTRM: 1575 (Roybal)

Debtor in this case moves for authority to pay a \$30,000 retainer to The Bankruptcy Law Firm, P.C. ("BLF") and \$15,000 to Moneymaker & Moneymaker ("M&M") from estate assets subject to an IRS lien. The purpose of the retainer to BLF is to defend the debtor in appeals brought by the IRS in this case and in related cases. The purpose of the M&M advance is to fund further litigation of the IRS claim filed against the debtor in this case. The court has previously approved the appointment of counsel and the payment of the retainers for these purposes.

1 According to the evidence before the court, the debtor has \$876,000 in an  
2 account in Bank of America, which constitute proceeds of the sale of eight  
3 properties. The IRS filed a lien on the debtor on June 25, 1999, which imposed a  
4 lien on all of Macca's assets. The purpose of this lien is to secure claims by the IRS  
5 totaling \$3,541,935 against (1) Khaled Ahmed with respect to his tax liabilities for  
6 1995 through 1998; (2) Apex Medical Lab, Inc., for 1999 and 2000 taxes; (3) Clinica  
7 Santa Maria, Inc. For 1996 taxes; and (4) Apex Reference Lab, Inc. For 1999 taxes.

8 To secure these same debts, the IRS also holds a lien against the assets of  
9 K & M Luxor that are worth some \$4,500,000, and against other assets with a total  
10 value of some \$5,376,000. The IRS has not disputed this valuation.

11 The IRS alleges that Macca is the alter ego of each of these entities.  
12 However, the IRS has submitted no evidence that Macca in support thereof, except  
13 for a tax court decision against Ahmed which finds in part that Macca is an alter ego  
14 of Ahmed. Notably, Macca was not a party to that litigation.

15 There is no doubt that the IRS is oversecured. Even if the court credits the  
16 IRS claims against Ahmed as found by the tax court, as well as the claims with  
17 respect to Apex Reference Lab, Clinica Santa Maria and Apex Medical Lab, the IRS  
18 is oversecured by approximately \$1,800,000.

19 The IRS is only entitled to be paid the amount owing to it. The excess belongs  
20 to the debtor in possession, and can be used by the debtor for any appropriate  
21 purpose. The use of a small portion of the excess for payment of counsel is a proper  
22 purpose.

23 The patent purpose of the IRS in opposing this motion is to deprive Macca of  
24 the funds necessary to hire counsel to represent it in this case and to defend itself  
25 against the IRS in pending appeals. The court finds this purpose is altogether  
26 improper. Macca is a corporation, and can only appear in court through counsel.  
27 If the court were to sustain the IRS objection, the IRS would thereby assure that it  
28 could proceed against Macca with no opposition, and obtain judgment against it by



CERTIFICATE OF MAILING

I certify that a true copy of this FINDINGS RE DEBTOR'S MOTION TO PAY RETAINERS TO COUNSEL FROM DIP FUNDS was mailed on MAR 29 2006 to the parties listed below:

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