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11 **UNITED STATES BANKRUPTCY COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **OAKLAND DIVISION**

14 In re  
15 PREDIWAVE CORPORATION,  
16 a California corporation,  
17 Debtor.

18 Fed. Tax I.D. No. 77-0494328  
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Case No. 06-40547 (RJN)

Chapter 11

**MOTION FOR AUTHORITY TO  
ESTABLISH PROCEDURES FOR  
INTERIM PAYMENT OF FEES AND  
REIMBURSEMENT OF EXPENSES**

**Hearing**

Date: July 27, 2006

Time: 10:00 a.m.

Place Courtroom 220

1300 Clay Street

Oakland, CA 94612

1 **TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE OFFICIAL**  
3 **COMMITTEE OF UNSECURED CREDITORS AND OTHER PARTIES IN INTEREST:**

4 PrediWave Corporation, a California corporation, the debtor and debtor in possession in  
5 the above captioned case ("PrediWave" or the "Debtor"), shall and hereby does move this Court  
6 for entry an order, pursuant to Bankruptcy Code section 331, establishing the interim fee  
7 procedures with respect to the professionals employed by and to be employed by order of the  
8 Court (collectively referred to as the "Professionals"<sup>1</sup>).

9 The Motion is supported by the Memorandum of Points and Authorities in Support thereof  
10 and the "Declaration of Vincent Lin in Support of the July 27 Motions" filed concurrently with  
11 the Motion (collectively, with the Motion, the "Moving Papers"), the record in the case,  
12 including the pleadings and documents filed on behalf of the parties, the arguments and  
13 representations of counsel, and any oral or documentary evidence presented at or prior to the time  
14 of the hearing.

15 **RELIEF REQUESTED**

16 By this Motion, the Debtor seeks entry of an order, pursuant to Bankruptcy Code section  
17 331, establishing the following interim fee procedures with respect to the Professionals.

18 i. Monthly Statements. Commencing in August 2006 and continuing each  
19 month thereafter, each Professional may prepare an abbreviated monthly fee statement (the  
20 "Monthly Statement") relating to the services rendered and expenses incurred by that Professional  
21 during the prior month. The Monthly Statement shall: (a) relate to the services rendered and  
22 expenses incurred during the prior month (or, in the case of the first Monthly Statement, the  
23 services rendered and expenses incurred from the Petition Date); (b) indicate the total amount of  
24 compensation sought for such services (taking into account the 20% holdback for fees); and (c)

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26 <sup>1</sup> The Professionals include: (a) Klee, Tuchin, Bogdanoff & Stern, LLP, the Debtor's reorganization counsel,  
27 (b) XRoads Solutions Group, LLC, the Debtor's proposed financial and restructuring advisor and employer  
28 of debtor's proposed chief restructuring officer and chief financial officer, (c) Latham & Watkins, LLP,  
special litigation counsel to the Debtor; and (d) Pachulski, Stang, Ziehl, Young, Jones & Weintraub,  
counsel to the Official Committee of Unsecured Creditors, and (e) any and all reorganization and other  
professionals that may be employed by the Debtor or its estate in the future.

1 include exhibits indicating (i) the services rendered, the total time expended, the names of the  
2 specific individuals who performed the services for which compensation is requested, and the  
3 hourly billing rate for each such individual, (ii) the expenses incurred, and (iii) a detailed listing of  
4 the time entries relating to all individuals who performed services, and a detailed listing of all  
5 expenses incurred during the applicable period.

6           ii. Service of Monthly Statement. Each Professional who submits a Monthly  
7 Statement shall, on or before the 20th day of the relevant month: (a) file the Monthly Statement  
8 with the Court; (b) serve a copy of the Monthly Statement on the Office of the United States  
9 Trustee (the "U.S. Trustee"), counsel for the Debtor, counsel for the Official Committee of  
10 Unsecured Creditors (the "Committee"), and parties that have filed and served on the Debtor  
11 requests for special notice (collectively, the "Core Parties"); and (c) file and serve upon all parties  
12 entitled to notice in this case pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure  
13 (the "Bankruptcy Rules") a notice setting forth the amount of compensation being requested  
14 pursuant to the Monthly Statement (the "Notice of Monthly Statement"). The Notice of Monthly  
15 Statement shall also provide that the Monthly Statement may be obtained upon written request  
16 from the applicable Professional.

17           iii. Objection Procedure. Any party in interest who objects to the payment of  
18 compensation set forth in a Monthly Statement must, within ten (10) days after the Monthly  
19 Statement is served, file a written objection with the Court and serve that objection on the Core  
20 Parties and the Professional whose Monthly Statement is the subject of the objection. Unless the  
21 Debtor or another party in interest files and serves an objection to the requested payment within  
22 ten (10) days of service of the Monthly Statement, the Debtor shall be authorized to pay 100% of  
23 the costs and 80% of the fees requested by each Professional in the ordinary course of its business  
24 on an interim basis as set forth in the Monthly Statement. If an objection is filed, the Debtor shall  
25 be authorized to pay 80% of any undisputed portion of the requested fees and 100% of the  
26 undisputed costs, pending resolution of any objections (consensually or by order of the Court).  
27 Upon resolution of any such objections, the Debtor shall pay the balance owed, subject to  
28 holdbacks and any agreed to adjustments.

1                   iv. Bankruptcy Code Section 331 Interim Fee Application Procedure. Within  
2 thirty (30) days after the end of each four-month period (the "Interim Fee Period"), commencing  
3 with the period ended August 31, 2006, except as otherwise set forth in the order governing  
4 employment of a particular Professional, each Professional that filed a Monthly Statement or  
5 otherwise seeks interim compensation shall file with the Court and serve on the Core Parties an  
6 interim fee application (the "Interim Application") pursuant to Bankruptcy Code section 331,  
7 Bankruptcy Rule 2016, the Local Bankruptcy Rules, and the "Guidelines for Compensation and  
8 Expense Reimbursement of Professionals and Trustees" (the "Guidelines") promulgated by this  
9 Court pursuant to Local Bankruptcy Rule 9029-1. Pursuant to such Interim Applications,  
10 Professionals may seek approval and payment of up to 100% of the compensation relating to  
11 Professional fees and reimbursement of expenses incurred since the Petition Date or in the prior  
12 four-month period, as the case may be, including any amounts withheld from monthly payments  
13 pursuant to Monthly Statements.

14                   Before the deadline for filing Interim Applications, counsel for the Debtor shall obtain  
15 from the Court a date for a hearing on the Interim Applications at least forty-five (45) days in  
16 advance and file and serve a notice of the intended hearing on the Interim Applications on the  
17 Core Parties and all Professionals (or, if the Court would prefer, the hearing on the Interim  
18 Application could be scheduled for the second omnibus hearing date occurring after the deadline  
19 for filing the Interim Applications) and, not less than twenty (20) days prior to that hearing, file  
20 with the Court and serve on the Core Parties, the Notice Parties and all Professionals a notice that  
21 specifies the Interim Applications that have been filed, the total amount of compensation for  
22 services and reimbursement of expenses sought in each such Interim Application, and the date  
23 and time of the hearing on the Interim Applications.

24                   Any party in interest may file and serve a written objection in accordance with the  
25 applicable Federal Rules and Local Bankruptcy Rules. No party will be estopped from objecting  
26 to an Interim Application on the ground that such party failed to object to any Monthly  
27 Statement. If an objection to an Interim Application is sustained, or if the Court otherwise so  
28 orders, the Professional shall disgorge to the Debtor the disallowed portion of any payment it

1 may have received.

2 In connection with the administration of this case, the Debtor or the Committee, from time  
3 to time, may seek to employ attorneys, accountants, and other Professionals for a finite period of  
4 time or for a limited purpose. In such instances, if any, the relevant Professionals, subject to the  
5 Court's approval, may be employed on terms and conditions different from those set forth herein,  
6 including, without limitation, on a retainer, an hourly basis, or a contingency fee basis.

7 **WHEREFORE**, the Debtor requests that the Court grant this Motion establishing the  
8 interim fee procedures described above.

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10 DATED: July 7, 2006

/s/ Jonathan S. Shenson

JONATHAN S. SHENSON, a Member of  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Reorganization Counsel for Debtor and  
Debtor in Possession

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