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11 Possession

12 **UNITED STATES BANKRUPTCY COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 **OAKLAND DIVISION**

15 In re

16 **PREDI WAVE CORPORATION,**  
a California corporation

17 Debtor.

18 Fed. Tax I.D. No. 77-0494328  
19  
20  
21  
22

Case No. 06-40547-RJN

Chapter 11

**FIRST AND FINAL APPLICATION OF  
LATHAM & WATKINS LLP FOR  
ALLOWANCE AND PAYMENT OF  
COMPENSATION FOR SERVICES  
RENDERED AND REIMBURSEMENT OF  
EXPENSES INCURRED AS SPECIAL  
LITIGATION COUNSEL TO DEBTOR AND  
DEBTOR IN POSSESSION FOR THE  
PERIOD APRIL 14, 2006 THROUGH  
JANUARY 31, 2007**

Hearing

Date: To Be Announced

Time:

Place:

Judge: Hon. Randall J. Newsome

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1 TO THE HONORABLE RANDALL J. NEWSOME, U.S. BANKRUPTCY JUDGE, THE U.S.  
2 TRUSTEE, THE CREDITORS' COMMITTEE AND OTHER INTERESTED PARTIES:

3 Latham & Watkins LLP ("Latham"), special litigation counsel to PrediWave  
4 Corporation (the "Debtor"), the debtor in the above-captioned chapter 11 case, respectfully  
5 submits its First and Final Application of Latham & Watkins LLP for Allowance and Payment of  
6 Compensation for Services Rendered and Reimbursement of Expenses Incurred as Special  
7 Litigation Counsel to Debtor and Debtor In Possession for the Period April 14, 2006 through  
8 January 31, 2007 (the "Application").<sup>1</sup>

9 **I. PRELIMINARY INFORMATION**

10 Latham submits this Application in accordance with section 330 of title 11 of the  
11 United States Code (the "Bankruptcy Code"), the "Guidelines for Compensation and Expense  
12 Reimbursement of Professionals and Trustees" issued by the United States Bankruptcy Court for  
13 the Northern District of California (the "Northern District Guidelines"), and the "Guidelines for  
14 Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11  
15 U.S.C. §330" (the "UST Guidelines") promulgated by the Office of the United States Trustee. In  
16 support of this Application, Latham respectfully represents and shows the following:

17 Date of Filing of Case:	April 14, 2006 (the " <u>Petition Date</u> ")
18 Present Cash Balance on Hand:	Unknown to Latham
19 Date of Appointment of Applicant:	Order entered June 19, 2006, <i>nunc</i> 20 <i>pro tunc</i> to the Petition Date
21 Time Periods of Application:	April 14, 2006 through January 31, 2007 (the " <u>Application Period</u> ")
22 Blended Hourly Rate of Professionals	\$301.80 <sup>2</sup>

23  
24  
25 <sup>1</sup> Latham reserves the right to file fee applications in the future for fees and expenses incurred  
26 after January 31, 2007 that are not included in, or otherwise exceed, the Estimated Amounts  
(as defined below).

27 <sup>2</sup> ***Except as otherwise expressly set forth herein, all amounts and percentages contained in***  
28 ***this Application have been calculated in accordance with the Santa Clara Action Fee***  
***Allocation (defined below). See Section III.B.***

1	Total Hours in this Application	6,332.63
2		
3	Total Fees Requested	\$1,911,214.40
4	Total Costs Requested	\$141,011.96
5	Estimated Amount Included for Remaining Services Related to the Lawsuits	\$25,000
6	Estimated Amount Included for Preparation of this Application and Anticipated Hearing on this Application	\$50,000
7	Total Fees and Costs Requested	\$2,127,226.40
8	Brief Description of Services	<u>See</u> Section IV below

9 **II. INTRODUCTION**

10 This Application is Latham’s first request for a final award of compensation and  
 11 reimbursement of expenses for services rendered to the Debtor during the period from April 14,  
 12 2006 through January 31, 2007 (defined above as the “Application Period”). **Latham has not**  
 13 **previously sought interim or final approval of its fees and expenses for services rendered**  
 14 **during the Application Period.**

15 Latham expended a total of 6,332.63 hours of professional services during the  
 16 Application Period, including time written-off as described in Section IV below and reflected on  
 17 Exhibit B. Pursuant to this Application, Latham requests total compensation for the Application  
 18 Period of \$2,127,226.40 (the “Total Requested Amount”), consisting of \$1,911,214.40 in fees  
 19 and \$141,011.96 in expenses, **plus** \$50,000, which is Latham’s estimate of the fees and  
 20 expenses it has incurred or will incur after January 31, 2007 in preparing this Application and  
 21 appearing at the hearing on this Application (the “Fee Application Estimated Amount”), **plus**  
 22 \$25,000, which is Latham’s estimate of the fees and expenses that it has incurred or will incur  
 23 during February 2007 in concluding its representation of the Debtor with respect to the Lawsuits  
 24 (defined below) (the “Additional Services Estimated Amount,” and together with the Fee  
 25 Application Estimated Amount, the “Estimated Amounts”).<sup>3</sup>

26 \_\_\_\_\_  
 27 <sup>3</sup> Latham will file a supplement to this Application no later than five (5) days prior to the  
 28 hearing on this Application setting forth its actual fees and expenses for February 2007.  
 Latham reserves the right to file an additional application in the event that its actual fees and

1 As more fully set forth in Sections IV and VI below, the Total Requested Amount  
2 does not include more than \$190,000 in fees that Latham has agreed voluntarily to write off and  
3 \$17,456.16 in expenses that Latham normally charges to its non-debtor clients but has agreed  
4 voluntarily not to charge to this estate. The \$190,000 in fees that Latham has agreed to write-off  
5 equals approximately nine percent (9%) of the total amount billed. Based on the total fees  
6 sought in this Application, Latham's blended hourly rate based on total hours billed is \$301.80.

7 Exhibit A to this Application is a summary of the 15,992 total hours of services  
8 rendered to the Debtor and the Other Defendants (defined below) during the Application Period,  
9 of which 6,332.63 have been allocated to the Debtor in accordance with the Santa Clara Action  
10 Fee Allocation (defined below). Exhibit A is broken down by each professional employed by  
11 Latham who rendered services during the Application Period and sets forth his or her billing rate.  
12 Exhibit B sets forth a summary of the total hours spent and fees incurred on a monthly basis for  
13 each activity category during the Application Period. Exhibit C contains Latham's detailed time  
14 records, sorted by activity category as more fully set forth in Section IV below.<sup>4</sup> Exhibit D is a  
15 schedule of the total amount of expenses incurred by Latham during the Application Period for  
16 which Latham seeks reimbursement hereunder.<sup>5</sup> Exhibit E contains biographies or resumes of  
17 the professionals or paraprofessionals who rendered more than one hundred (100) hours of  
18 services to the Debtor during the Application Period. Exhibit F is a copy of the transmittal letter  
19 that Latham sent to Vincent Lin, the Debtor's Vice President and General Counsel and the  
20 "responsible person" appointed in this chapter 11 case, as required by the Northern District  
21 Guidelines.

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22 expenses exceed the Estimated Amounts. In addition, Latham reserves the right to file  
23 additional fee applications in the event that the Debtor requests its services beyond February  
24 28, 2007.

24 <sup>4</sup> Exhibits C-2(a) through C-2(j) include all of Latham's time entries for the Santa Clara Action  
25 even though, pursuant to this Application and the Santa Clara Action Fee Allocation, it is  
26 seeking payment from the Debtor for only thirty percent (30%) of the fees that it incurred in  
27 connection with that Action, other than fees incurred in connection with the removal of that  
28 action to this Court and New World's motions for remand and relief from that automatic stay,  
for which it is seeking one hundred percent (100%) of its fees. See Section IV below.

<sup>5</sup> Exhibit D reflects adjustment of expenses billed under the Category 0002 based on the Santa Clara  
Action Fee Allocation

1 **III. BACKGROUND**

2 **A. Latham’s Pre-Petition Engagement.**

3 Latham served as principal litigation counsel to the Debtor (and certain affiliates)  
4 since June 2005. Latham attorneys have principally represented the Debtor in two lawsuits. The  
5 first of these lawsuits (the “Los Angeles Action”) was brought by the Debtor against Jimmy Li  
6 and Fu Sze Shing for breach of fiduciary duty, unfair competition, tortious interference with  
7 contract, tortious interference with prospective business advantage and declaratory relief. The  
8 second lawsuit, New World TMT Ltd v. PrediWave Corp. et al. (Santa Clara Superior Court  
9 Case No. 104 CV020369) (the “Santa Clara Action,” and together with the Los Angeles Action,  
10 the “Lawsuits”) was brought by New World TMT Ltd. (“New World”), the holder of the  
11 Debtor’s preferred stock and a contract party with the Debtor, against the Debtor, CyberLancet  
12 Corporation, CyberNova Corporation, TechStock Corporation, WarpEra Corporation, Visionaire  
13 Technology Corporation, S.T.U.B. SATertainment, Incorporated, Athena Database,  
14 Incorporated, Pine Global Marketing Limited (collectively, but excluding the Debtor, the  
15 “Affiliated Companies”) and Jianping “Tony” Qu, the Debtor’s chairman and majority  
16 stockholder (collectively with the Affiliated Companies, the “Other Defendants”), in the  
17 Superior Court in Santa Clara, California (the “Santa Clara Court”). The Debtor filed cross-  
18 claims against New World in the Santa Clara Action. Latham represented the Debtor in the Los  
19 Angeles Action and the Debtor and the Other Defendants in the Santa Clara Action.

20 The Lawsuits have their roots in a four-year business relationship between New  
21 World, the Debtor and the Other Defendants. A more detailed description of the events leading  
22 up to the Petition Date, including the background of the Lawsuits, is set forth in the Declaration  
23 of Vincent Lin in Support of First Day Emergency Motions [Docket No. 24]. A more detailed  
24 description of the Santa Clara Action is set forth in Section IV.B below.

25 **B. Latham’s Retention in the Chapter 11 Case and the Santa Clara Action Fee**  
26 **Allocation**

27 On the Petition Date, the Debtor filed a voluntary petition for relief under chapter  
28 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its

1 properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy  
2 Code.

3 On April 17, 2006, the Debtor filed an application for entry of an order  
4 authorizing the Debtor to retain, employ and compensate Latham as bankruptcy counsel and  
5 special litigation counsel for the Debtor (the “Initial Employment Application”) [Docket No. 25].

6 On May 3, 2006, the United States Trustee (the “U.S. Trustee”) appointed an  
7 official committee of unsecured creditors (the “Committee”) in this Chapter 11 case [Docket  
8 Nos. 83 and 85]. On May 15, 2006, the Debtor filed a supplement to the Initial Employment  
9 Application (the “Supplement”) [Docket No. 115]. On May 22, 2006, New World filed its  
10 objection to the Initial Employment Application [Docket No. 126]. At a hearing held on May  
11 24, 2006, this Court denied the Initial Employment Application but indicated that it would  
12 entertain an application to retain Latham as special litigation counsel for the Debtor.

13 On June 7, 2006, the Debtor filed an application to retain, employ and compensate  
14 Latham as special litigation counsel for the debtor and debtor in possession nunc pro tunc to the  
15 Petition Date (the “Special Litigation Counsel Application”) [Docket No. 158]. The Special  
16 Litigation Counsel Application provided, among other things, that Latham would continue to  
17 represent the Other Defendants, in addition to the Debtor, in the Santa Clara Action. To address  
18 concerns that had been raised by both the Court and New World that the Debtor not bear a  
19 disproportionate portion of fees and expenses in the Santa Clara Action, the Debtor disclosed in  
20 the Special Litigation Counsel Application that, from and after the Petition Date, seventy percent  
21 (70%) of Latham’s fees and expenses in the Santa Clara Action would be allocated to and  
22 payable by the Other Defendants and the remaining thirty percent (30%) of Latham’s fees and  
23 expenses would be allocated to and payable by the Debtor (subject to the filing and approval by  
24 this Court of fee applications) (the “Santa Clara Action Fee Allocation”).<sup>6</sup> No party in interest in

25 <sup>6</sup> As the Debtor was the sole plaintiff in the Los Angeles Action, Latham has billed the Debtor  
26 for all of the fees and expenses incurred in that litigation. Latham has also billed the Debtor  
27 for the fees and expenses incurred in connection with the removal of the Santa Clara Action  
28 to this Court and objecting to New World’s motion for relief from the automatic stay to  
continue its prosecution of the Santa Clara Action and its motion to remand the Santa Clara  
Action to the Santa Clara Court (all which time is included in Category 0002(i)). Similarly,

1 this case opposed the Special Litigation Counsel Application or the Santa Clara Action Fee  
2 Allocation. On June 19, 2006, this Court entered an order (the “Special Counsel Order”)  
3 approving Latham’s Special Litigation Counsel Application [Docket No. 182].

4 In the Special Counsel Order, the Court made specific findings regarding the  
5 Debtor’s retention of Latham, including that (i) employment of Latham for the purposes set forth  
6 in the application is in the best interests of the estate and its creditors, and (ii) Latham does not  
7 hold or represent any interest materially adverse to the Debtor, any creditors of the Debtor, or  
8 any other party in interest with respect to the matters upon which Latham is engaged.

9 **C. Status of the Case.**

10 A description of the status of the case is set forth in Section III.B. of the “Second  
11 Interim Application of Klee, Tuchin, Bogdanoff & Stern LLP for Allowance and Payment of  
12 Interim Compensation and Reimbursement of Expenses as Reorganization Counsel to Debtor  
13 and Debtors in Possession for the Period September 1, 2006 through December 31, 2006”  
14 [Docket No. 412], which section is incorporated herein.

15 **D. Latham’s Compensation**

16 Prior to the commencement of this chapter 11 case, Latham received a retainer  
17 from the Debtor (the “Retainer”). As of the Petition Date, the remaining balance of the Retainer  
18 was approximately \$193,000.<sup>7</sup> In accordance with applicable guidelines and the Special Counsel  
19 Order, the Retainer continues to be held by Latham. Upon approval of this Application, Latham  
20 will first apply to payment of its fees and expenses the Retainer.

21 In addition to the Retainer provided by the Debtor, the Other Defendants also

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22 Latham has billed the Debtor for all fees and expenses that Latham has incurred in assisting  
23 the Debtor’s general bankruptcy counsel.

24 <sup>7</sup> In the Special Litigation Counsel Application, Latham estimated the amount of the Retainer  
25 at \$91,000. After further reconciliation, Latham discovered that an additional approximately  
26 \$102,000 remained on the Retainer. Thus, the total amount of the Retainer is approximately  
27 \$193,000. In addition, in order to facilitate the administration of the payment of the costs  
28 and expenses of vendors used in the Santa Clara Action, the Debtor and the Other Defendants  
pre-funded an account with Latham. Funds in this account were used exclusively to pay  
these vendors. Currently, \$19,648.09 is being held in this account. As instructed, Latham  
will either use the funds in this account to pay vendors with outstanding unpaid invoices or  
return these funds to the Debtor and the Other Defendants.

1 provided Latham with a litigation retainer in the amount of \$2,000,000. Consistent with the  
2 Santa Clara Action Fee Allocation, these funds have been applied to pay part of the 70% portion  
3 allocated to the Other Defendants in respect of services rendered after the Petition Date in  
4 connection with the Santa Clara Action. The litigation retainer provided by the Other  
5 Defendants has been fully exhausted.

6 A more detailed description of the Santa Clara Action Fee Allocation and the  
7 outstanding fees and expenses in respect of the Santa Clara Action is set forth in Section IV.B  
8 below.

#### 9 IV. SUMMARY OF PROFESSIONAL SERVICES

10 The following summary sets forth a description of the services rendered by  
11 Latham during the Application Period, the hours expended for such services and the blended rate  
12 for such services, each by subject matter Category. Due to the nature, size and complexity of the  
13 Lawsuits and the unique circumstances of this chapter 11 case, Latham has allocated the basic  
14 areas of responsibility among various teams of lawyers. Heeding the Court's comments at a  
15 hearing in May 2006, Latham substantially reduced the litigation team working on the Santa  
16 Clara Action from June 2006 forward. Latham attorneys were organized generally as follows:

- 17 • Technical team: This group of attorneys focused on the technical issues  
18 posed in the case; namely, New World's allegations that the products  
19 developed by the Debtor and many of the Other Defendants were  
20 defective and did not meet industry specifications. This involved  
21 depositions of fact witnesses on technical issues, examination and defense  
22 of a number of expert witnesses on cable television technology, and other  
23 discovery, motion practice, and pre-trial activities related to these issues.  
24 This group was comprised principally of Daniel Schecter, James Lynch,  
25 David Friedman, Xochitl Arteaga, and Emily Dahm.
- 26 • Contract and Corporate Governance team: This group of attorneys  
27 focused on the extensive contractual issues posed by the litigation,  
28 particularly questions of the parties' performance under the numerous

1 agreements, numerous legal questions of liability and causation stemming  
 2 from these agreements, and extensive discovery, motion practice, and pre-  
 3 trial activities related to these issues. The group also focused on  
 4 allegations related to the Debtor and the Other Defendants' use of the  
 5 companies' funds and the allegations that the defendants breached the  
 6 Stock Purchase Agreements. This group was comprised principally of  
 7 Paul Dawes, Patrick Gibbs, John Tang, Phil Wang, and David Fortney.

- 8 • Bankruptcy team: Gregory Lunt and Alan Leavitt, with the support of the  
 9 other teams, have assisted with matters relating to Latham's retention, the  
 10 preparation of this Application, and communications with the Debtor's  
 11 general bankruptcy counsel, Klee, Tuchin, Bogdanoff & Stern LLP  
 12 ("KTBS"). They also assisted the Debtor in its selection of KTBS as  
 13 its general bankruptcy counsel, and assisted KTBS in familiarizing itself  
 14 with the Debtor's' chapter 11 case.

15 In accordance with the Northern District Guidelines, Latham has established the  
 16 following billing categories for this engagement:

<u>Matter No.</u>	<u>Description</u>	<u>Percentage Allocated to Debtor</u>
0001	Los Angeles Action	100%
0002(a)	Santa Clara Action – Expert Witness Discovery	30%
0002(b)	Santa Clara Action – Hong Kong Proceedings	30%
0002(c)	Santa Clara Action – Other Discovery	30%
0002(d)	Santa Clara Action – Mediation	30%
0002(e)	Santa Clara Action – Summary Adjudication	30%
0002(f)	Santa Clara Action – Trial Preparation	30%
0002(g)	Santa Clara Action – Motion for Terminating Sanctions	30%
0002(h)	Santa Clara Action – State Court Hearings and Telephonic Conferences	30%
0002(i)	Santa Clara Action – Removal, Abstention and Relief from Stay	100%
0002(j)	Santa Clara Action – Other Proceedings	30%
0003	General Case Administration	100%
0004(a)	Latham Retention Application and Related Matters	100%
0004(b)	Latham Fee Application and Related Matters	100%
0005(a)	Assistance to Debtor and its Counsel – Motions and Court Proceedings	100%
0005(b)	Assistance to Debtor and its Counsel – Communications	100%
0005(c)	Assistance to Debtor and its Counsel – Schedules and	100%

<u>Matter No.</u>	<u>Description</u>	<u>Percentage Allocated to Debtor</u>
	Statements	
0005(d)	Assistance to Debtor and its Counsel – General Corporate	100%
0005(e)	Assistance to Debtor and its Counsel – Other	100%
0006	Subordination Litigation	100%

For the reasons set forth in the following subsections of this Section IV and as summarized on Exhibit B, Latham has agreed to write-off more than \$190,000 in fees, representing approximately nine percent (9%) of the total amount billed during the Application Period.

**A. Category 0001 – Los Angeles Action**

Time billed to this Category relates to Latham’s work in connection with the Los Angeles Action, which involved the removal of the action to this Court and the handling of *de minimis* administrative matters since the Petition Date.

Attached as Exhibit C-1 is a chronological report of the services Latham provided to the Debtor under this Category during the Application Period. Latham billed 59.0 hours, resulting in \$19,575.00, which represents approximately 1% of the total fees requested pursuant to this Application. The blended hourly rate for this Category is \$331.78.

**B. Category 0002 – Santa Clara Action**

Time billed to this Category relates to Latham’s work in connection with the Santa Clara Action.

1. Summary of the Litigation

The Santa Clara Action was particularly complex and contentious, involved numerous parties, claims and legal theories, a tremendous amount of evidence, protracted discovery (much of it in Chinese), and very extensive briefing.

New World brought suit against the Debtor and the Other Defendants alleging twelve different causes of action, claiming that the Debtor breached the parties’ exclusive distributorship agreement and several written purchase orders by failing to deliver a “commercially acceptable VOD [video on demand] STB system” and by delivering products that did not conform to implied and express warranties. New World also claimed that it was

1 fraudulently induced to invest in the Debtor and the Affiliated Companies, and that the Debtor  
2 and the Affiliated Companies breached their stock purchase agreements with New World, by  
3 among other things: (1) awarding certain bonuses and benefits to Mr. Qu; (2) failing to develop  
4 certain products or services; (3) failing to provide financial statements; (4) failing to consult on  
5 key decisions; (5) failing to obtain co-signatures for checks and wire transfers in excess of  
6 \$500,000; (6) failing to possess certain intellectual property; and (7) failing to disclose  
7 information through representations and warranties in the stock purchase agreements.

8           The Debtor counter-sued, also asserting twelve causes of action, and alleging that  
9 New World breached its obligation under the product purchase agreements and interfered with  
10 the Debtor’s economic expectancy.

11           The litigation required counsel to learn and understand the technology at issue,  
12 which at the time was described by experts in the industry and New World as “revolutionary.”  
13 The Debtor had two patents issued and several patents pending. Some of the Affiliated  
14 Companies also had patent-portfolios (both issued and pending). The Litigation also required  
15 counsel to understand the purported basis of New World’s claim that it had been duped into  
16 making its investments, that the VOD products did not work, that demonstrations of the products  
17 in mainland China were failures, and that the Debtor and the Other Defendants were wasting  
18 assets. Interpreting the contracts also required significant work. The contracts were lacking in  
19 critical detail, and thus required the parties to spend substantial resources in divining the parties’  
20 intent in entering into the agreements.

21           Over the two-year life-span of the litigation, the parties produced more than one  
22 million pages of documents, many of which were in Chinese and required translation, often on  
23 an expedited basis. Over 130 days of deposition testimony were taken, of over 70 witnesses.<sup>8</sup>  
24 These included several depositions of former employees of the Debtor and the Affiliated  
25 Companies (all noticed by New World), depositions of several witnesses residing in Hong Kong  
26

---

27 <sup>8</sup> Some of these witnesses were deposed in the Los Angeles Action. However, the depositions  
28 taken in that action were also used in connection with the Santa Clara Action

1 or mainland China, depositions of New World senior management, five days of deposition  
2 testimony of the Debtor's founder and inventor of the technology (noticed by New World), and  
3 numerous other fact witnesses. Many of the depositions also required Chinese translation, which  
4 significantly increased the number of days of testimony. In addition, almost twenty testifying  
5 experts (thirteen of whom ultimately were deposed) were designated by the parties on issues  
6 such as document authenticity and validity, technology, forensic accounting, damages, and other  
7 subject areas.

8 Over the two years, the parties engaged in substantial fact written discovery  
9 (literally thousands of interrogatories, requests for production, etc.), motion practice on  
10 discovery issues, summary adjudication briefing, and other motion practice. The case was set for  
11 trial in October 2006 (it had been set for June 2006 before the Debtor filed its petition), and the  
12 Debtor and the Other Defendants retained a mock jury to prepare for trial a month before. The  
13 landscape of the Santa Clara Action then changed dramatically very late in the litigation process.  
14 The triggering event came on September 28, 2006, when, during the course of a deposition in  
15 Hong Kong of third-party HSBC (a bank), documents were produced demonstrating that certain  
16 prior deposition testimony of Mr. Qu and other witnesses concerning a third-party entity named  
17 Modern Office Technologies Ltd. ("Modern Office") was untrue. This revelation, which was the  
18 first direct evidence establishing the falsity of certain prior deposition testimony, precipitated a  
19 series of key events that unfolded in quick succession. These included Mr. Qu's disobedience of  
20 subsequent court orders to appear for deposition and for a mandatory settlement conference,  
21 Latham's withdrawal from the representation of Mr. Qu, and the entry by the Santa Clara Court  
22 of terminating sanctions against all defendants. In December 2006, default judgment was  
23 entered against all of the defendants for a total judgment of \$2,817,075,320.20 (which included  
24 \$2 billion in punitive damages).

25 2. The Work Performed Post-Petition

26 Although the Debtor filed for bankruptcy protection on April 14, 2006, the  
27 reprieve from the Santa Clara Action was short-lived. On the date the Debtor filed for  
28 bankruptcy, the parties were in the midst of briefing cross-motions for summary adjudication,

1 each of which was extremely complex and supported by over 1,000 pages of submitted evidence.  
2 Additionally, the parties were beginning expert witness discovery, anticipating between ten and  
3 twenty testifying experts, and furthermore were in a discovery battle in the Hong Kong courts  
4 over documents in the possession of HSBC.

5           Perhaps most important, however, trial remained scheduled for June 19, 2006.  
6 Therefore Latham was preparing witness lists, trial exhibits, witness examination outlines, trial  
7 briefs, and motions in limine, among a myriad of other items. Because Latham anticipated that  
8 New World would move to lift the automatic stay to proceed with trial (and indeed, that such a  
9 motion might well be successful), Latham necessarily had to continue with these preparations.  
10 Indeed, at all times from April 14, 2006 through late November 2006, a trial date remained on  
11 the parties' calendar.

12           While Latham substantially reduced its trial team to conserve resources post-  
13 Petition Date, given the constant possibility of trial going forward and the previously-mentioned,  
14 intensely-contentious nature of the litigation, it was impossible to ignore the work involved in  
15 preparing for trial.

16           In the period immediately following the Debtor's bankruptcy filing, Latham  
17 removed the Santa Clara Action to federal court in part to guarantee the Debtor the "breathing  
18 room" it needed as a debtor, and to coordinate the litigation with the bankruptcy proceeding.  
19 Latham also expended time opposing New World's motion to remand.

20           On April 26, 2006, New World filed its motion for relief from the automatic stay  
21 [Docket No. 69]. At the Debtor's request, Latham vigorously opposed this motion to avoid  
22 irreparable harm to the Debtor's estate.

23           Ultimately, the Santa Clara Action was remanded and the automatic stay was  
24 lifted on July 7, 2006 once the Debtor had the opportunity to regain its footing. At that point, the  
25 Santa Clara Action proceeded towards trial, which had been continued to October 23, 2006 (and  
26 later to November 21, 2006). As expected, Latham resumed the intense litigation schedule that  
27 existed on the Petition Date – preparing for further briefing on summary adjudication, expert  
28 witness discovery, mediation, and trial, among numerous other related tasks.

1                   Following the HSBC discovery proceeding on September 28, 2006, Latham  
2 continued to perform a tremendous amount of work attending to other aspects of the Santa Clara  
3 Action, most notably preparing for the trial, which remained on calendar. The principal tasks are  
4 described below, but included extensive witness preparation, preparation of trial exhibits, and the  
5 drafting of numerous motions in limine. In addition to preparing for all aspects of what was then  
6 anticipated to be a several-week jury trial, Latham was actively engaged in attending to the  
7 collateral effects of the revelations by HSBC. This included reviewing the voluminous record in  
8 the Santa Clara Action to identify and correct the court record (defendants filed a motion on  
9 November 6, 2006, for leave to submit corrected pleadings), as well as a similar exercise with  
10 respect to the record in the Hong Kong proceedings (a corrective affirmation was filed on or  
11 about October 23, 2006). In addition to the above tasks, Latham became actively engaged in  
12 protracted settlement negotiations with New World, which ultimately proved unsuccessful.

13                   Subsequently, Latham assisted the defendants in opposing New World's motion  
14 for terminating sanctions, and following Latham's withdrawal as counsel for Mr. Qu, Latham  
15 continued to represent the Debtor and the Affiliated Companies through the entry of judgment.

16                   The following descriptions provide details regarding the post-petition services  
17 performed by Latham in connection with the Santa Clara Action.<sup>9</sup>

18                   a.       Expert Witness Discovery

19                   Latham has included time spent on expert witness discovery and related matters in  
20 Category 0002(a). At the time of the Debtor's bankruptcy filing, expert witness discovery only  
21 recently had begun. Therefore, over the summer and fall, Latham consulted with and prepared  
22 the Debtor's experts for deposition, reviewed and produced documents from the Debtor's  
23 experts, received and reviewed thousands of pages of documents from New World's experts, and  
24 took or defended the depositions of thirteen expert witnesses.

25 \_\_\_\_\_  
26 <sup>7</sup> It should be noted that, in addition to being a complex litigation matter, the Santa Clara Action  
27 was also an international dispute. Latham attorneys from several different offices not only were  
28 involving in proceedings across the United States, but also attended to expert witness  
depositions, preparation sessions, and other case-related matters in China, Taiwan, Japan and  
Canada.

1 Set forth below is a list of the Debtor's experts and New World's experts and the  
 2 area of expertise for each such expert:

<b>Debtor's and Other Defendants' Experts</b>		
<i>Name</i>	<i>Deposition Date</i>	<i>Area of Expertise</i>
Walt Cicora	8/31/2006	Cable television industry, technological issues
Nellie Chang	Not deposed	Chinese government documents authentication
Thomas Elliot	9/12/2006	Cable television industry, technological issues
William Hasler	Not deposed	Corporate governance issues
Gek Kwee Lee	10/5/2006	Chinese government documents authentication
Paul Meyer	9/15/2006	Damages and lost profits
Gerald Richards	10/11/2006	Handwriting verification, document authentication
Alan Robillard	9/12/2006	Handwriting verification, document authentication
Michael Song, Ph.D	9/6/2006	Chinese business and marketing culture
Avram Tucker	10/5/2006	Forensic accounting
Michael Ungar	Not deposed	Immigration issues
Anthony Wechselberger	9/8/2006	Technological issues
<b>New World's Experts</b>		
<i>Name</i>	<i>Deposition Date</i>	<i>Area of Expertise</i>
Wendell Bailey	8/1/2006	Cable television industry, technological issues
Irving Kagan	4/5/2006	Corporate governance issues and practices
Terry Lui	10/10/2006	Chinese business culture
Robert McNamara, Ph.D	8/29/2006	Technological and engineering issues
David Nolte	Not deposed	Damages
Angelo Paparelli	9/26/2006	Immigration issues
Daniel Ray	9/7/2006	Forensic accounting
Howard Rile	10/10/2006	Document authentication
Bruce Strombom	9/21/2006	Damages
Rupert Utley	Not deposed	Chinese government documents authentication

16 In line with the complexity of the technology at issue in the litigation, even non-  
 17 technical experts had to be debriefed on the nature and contours of the Debtor's products.  
 18 Furthermore, in line with the contentious nature of the litigation, Latham attorneys were forced  
 19 to spend substantial amounts of time negotiating with counsel for New World over the timing  
 20 and scope of expert depositions, and at times required the Court's intervention to resolve  
 21 disputes.

22 Because of the large volume of information involved, the technical nature of  
 23 many of the experts' opinions, and the time frames involved, Latham on occasion had more than  
 24 one attorney involved in portions of the preparation of expert depositions. However, the bulk of  
 25 the preparation for and taking of depositions was completed by lone attorneys, with assistance as  
 26 necessary from other attorneys and paralegals. Nonetheless, Latham has agreed to write-off  
 27  
 28

1 \$8,520.98, or approximately four percent (4%) of the fees that it incurred in this Category. This  
2 write-off includes \$1,814 in fees for travel-related time allocable to the Debtor in this Category.<sup>10</sup>

3 Attached as Exhibit C-2(a) is a chronological report of the services Latham  
4 provided to the Debtor under this Category during the Application Period. Latham billed 724.26  
5 hours, resulting in \$215,043.82 in fees (after giving effect to the write-off described above),  
6 which represents 11.25% of the total fees requested pursuant to this Application. The blended  
7 hourly rate for this Category is \$296.92.

8 b. Hong Kong Proceedings

9 Latham has included time relating to a third-party discovery dispute in Hong  
10 Kong in Category 0002(b). In connection with New World's pursuit of discovery regarding  
11 Modern Office, New World successfully moved the Santa Clara Superior Court to issue a Letter  
12 of Request to the courts in Hong Kong, seeking discovery of documents concerning Modern  
13 Office believed to be held by another third party, HSBC. Latham coordinated its response with  
14 the Debtor's local Hong Kong counsel at Allen & Overy LLP ("Allen & Overy"). Together,  
15 Allen & Overy and Latham resisted this discovery on the Debtor's behalf through motion and  
16 appellate practice in Hong Kong. When the Letter of Request was granted by the Hong Kong  
17 court, Latham then participated in discovery conducted in Hong Kong, including a third-party  
18 deposition and the production and review of bank and other documents concerning Modern  
19 Office.

20 Attached as Exhibit C-2(b) is a chronological report of the services Latham  
21 provided to the Debtor under this Category during the Application Period. Latham billed 55.68  
22 hours, resulting in \$25,427.25 in fees (after giving effect to the write-off described below), which

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23  
24 <sup>10</sup> A portion of the fees that Latham has agreed to write-off relates to the travel time of its  
25 lawyers and paraprofessionals. While the Northern District Guidelines state that airplane  
26 travel time is generally not compensable unless work is actually done during the flight, this  
27 Court stated during a hearing on December 13, 2006, that "if traveling during normal  
28 business hours, 8 a.m. – 5 p.m. the Court will allow that travel time" [Docket No. 374]. Most  
of the travel time reflected in Latham's business statements occurred during normal business  
hours. However, Latham has agreed to write off \$8,160.85, which represents approximately  
twenty percent (20%) of the fees allocable to the Debtor for Latham's travel time, since a  
portion of its travel time extended beyond normal business hours.

1 represents 1.3% of the total fees requested pursuant to this Application. The blended hourly rate  
2 for this Category is \$456.67. Latham has agreed to write-off \$920.70 of its fees for travel-related  
3 time allocable to the Debtor that it incurred in this Category, which equals approximately 3% of  
4 the total time billed to this Category.

5 c. Other Discovery

6 Latham has included in Category 0002(c) time relating to the investigation of the  
7 allegations made by a former employee of the Debtor, and the review and production of  
8 documents obtained during that investigation. Shortly before the Debtor's bankruptcy filing, one  
9 of its former employees came forward with allegations of constructive wrongful termination  
10 against the Debtor related in part to the New World litigation. Latham attorneys investigated the  
11 employee's allegations through extensive client interviews and ultimately found the employee's  
12 allegations to be without merit.

13 However, over the course of the investigation, it was learned that the employee  
14 possessed an old, external hard drive, containing documents that were potentially responsive to  
15 prior New World discovery requests in the Santa Clara Action. The hard drive had not  
16 previously been brought to the attention of the Debtor's information technology personnel or the  
17 Debtor's counsel. Therefore, although fact discovery had closed prior to the Debtor's  
18 bankruptcy filing, Latham promptly undertook an expedited review of the recently-discovered  
19 documents. This review ultimately resulted in the production of an additional 56,627 pages of  
20 documents to New World. Latham had to designate additional attorneys to meet the expedited  
21 time requirements to review these voluminous documents and produce them as necessary.

22 Also included in this category is time relating to additional fact-based discovery  
23 that was on-going throughout the litigation. Most of this time was spent in connection with  
24 reviewing and producing documents related to the Debtor's monthly bank statements. This  
25 discovery was required to be produced even after the close of fact discovery.

26 Attached as Exhibit C-2(c) is a chronological report of the services Latham  
27 provided to the Debtor under this Category during the Application Period. Latham billed 238.38  
28 hours, resulting in \$68,170.47 in fees, which represents 3.6% of the total fees requested pursuant

1 to this Application. The blended hourly rate for this Category is \$285.97. Latham has agreed to  
2 write-off \$104.28 of its fees for travel-related time allocable to the Debtor that it incurred in this  
3 Category.

4 d. Mediation and Settlement

5 Latham has included time spent on mediation and related matters in Category  
6 0002(d). The parties participated in a full-day mediation in San Francisco on May 19, 2006  
7 before Anthony Piazza, a well-qualified mediator. In connection with the mediation, Latham  
8 prepared an extensive mediation brief, developed mediation and settlement strategies and a  
9 proposal with its clients, attended the mediation session, prepared a settlement proposal, and  
10 engaged in extended settlement discussions with New World. In addition, Latham engaged in  
11 renewed settlement discussions with New World's counsel in the fall of 2006.

12 Latham has agreed to write-off \$90.72 of its fees for travel-related time allocable  
13 to the Debtor that it incurred in this Category. Attached as Exhibit C-2(d) is a chronological  
14 report of the services Latham provided to the Debtor under this Category during the Application  
15 Period. Latham billed 172.95 hours, resulting in \$78,021.63 in fees, which represents 4% of the  
16 total fees requested pursuant to this Application. The blended hourly rate for this Category is  
17 \$451.12.

18 e. Summary Adjudication

19 Latham has included time spent on summary adjudication matters in Category  
20 0002(e). The briefing on summary adjudication involved cross-motions on sixteen causes of  
21 action (out of the twenty-four total causes of action at issue). Each party submitted over 1,000  
22 pages of evidence in support of its motion. On reply, Latham filed not only a brief but also  
23 extensive objections to New World's voluminous evidence. In total, the briefing and supporting  
24 papers for the reply on summary adjudication totaled 159 pages.

25 Latham has agreed to write-off \$117.24 of its fees for travel-related time allocable  
26 to the Debtor that it incurred in this Category. Attached as Exhibit C-2(e) is a chronological  
27 report of the services Latham provided to the Debtor under this Category during the Application  
28 Period. Latham billed 251.37 hours, resulting in \$89,247.06 in fees, which represents 4.7% of

1 the total fees requested pursuant to this Application. The blended hourly rate for this Category is  
2 \$355.04.

3 f. Trial Preparation

4 Time spent by Latham in preparing for trial, drafting briefs and related matters  
5 has been included in Category 0002(f). Trial in this complex, far-flung action was scheduled for  
6 twenty court days. Consistent with the complexity of the factual and legal issues involved,  
7 preparation for trial required extensive work by Latham attorneys.

8 Latham attorneys prepared factual timelines, demonstrative exhibits, argument  
9 outlines, witness examination outlines, jury instructions, trial briefs, and motions in limine. The  
10 scope of trial was expected to be vast, with forty-five anticipated witnesses. On behalf of the  
11 defendants, Latham prepared sixteen motions in limine, totaling 116 pages of briefing. New  
12 World submitted twelve motions in limine, each of which Latham attorneys reviewed and  
13 prepared to argue. The Defendants' proposed jury instructions, which Latham prepared,  
14 exceeded one hundred pages. The Defendants' trial exhibit list included 131 documents, culled  
15 from a collection of almost 1,600 potential trial exhibits.

16 In addition, Latham prepared for and staged a mock trial to test its theories of the  
17 case, trial exhibits, and witnesses before a live jury. The purpose of the mock trial was twofold:  
18 to dry-run trial strategies and to evaluate juror response to the Debtor's trial story and witnesses,  
19 in order to identify any adjustments necessary for trial. In preparation for the mock trial, Latham  
20 prepared smaller-scale versions of all trial materials, including argument outlines, evidence,  
21 video deposition testimony, trial exhibits, and jury instructions.

22 While the services provided by Latham in this Category were consistent with  
23 those that it provides its non-bankruptcy clients in similar complex litigations and commensurate  
24 with what it and its client felt were appropriate under the circumstances, Latham has agreed to  
25 write-off \$34,964.33, or approximately 5%, of the fees that it incurred in this Category. This  
26 write-off includes approximately \$719 in fees for travel-related time allocable to the Debtor in  
27 this Category.

28 Attached as Exhibit C-2(f) is a chronological report of the services Latham

1 provided to the Debtor under this Category during the Application Period. Latham billed 2,342.1  
2 hours, resulting in \$649,943.32 in fees (after giving effect to the write-off described above),  
3 which represents 34% of the total fees requested pursuant to this Application. The blended  
4 hourly rate for this Category is \$277.50.

5 g. Motion for Terminating Sanctions

6 Time spent by Latham in connection with New World's motion for terminating  
7 sanctions in the Santa Clara Action has been included in Category 0002(g). As described above,  
8 the HSBC document production in late September 2006 regarding Modern Office coupled with  
9 defendant Qu's subsequent refusal to obey court orders to appear for a mandatory settlement  
10 conference and appear for additional deposition, led to a dramatic shift in the litigation landscape  
11 only shortly before the scheduled trial date. New World moved for terminating sanctions based  
12 upon several of the defendants' allegedly perjurious testimony and Qu's disobedience of the  
13 Santa Clara Court orders and the allegedly-perjurious deposition testimony regarding Modern  
14 Office. On behalf of the defendants, Latham opposed New World's motion, filing a seventeen-  
15 page brief and participating in numerous court hearings. Also included in this category is time  
16 spent on behalf of the Debtor related to monitoring the default judgment proceedings and an  
17 injunction ordered by the Santa Clara Court as a result of the Santa Clara Court's order granting  
18 terminating sanctions.

19 Attached as Exhibit C-2(g) is a chronological report of the services Latham  
20 provided to the Debtor under this Category during the Application Period. Latham billed 215.64  
21 hours, resulting in \$89,764.29 in fees, which represents 4.7% of the total fees requested pursuant  
22 to this Application. The blended hourly rate for this Category is \$416.27.

23 h. State Court Hearings and Telephonic Conferences

24 Latham has included time spent preparing for and attending court hearings and  
25 telephonic conferences and certain related matters in Category 0002(h). In connection with the  
26 summary adjudication motions, motion for terminating sanctions, motion to withdraw, and other  
27 motions, the parties had at least three in-person and sixteen telephonic hearings with the Santa  
28 Clara Superior Court. These hearings often required the participation of more than one Latham

1 attorney. Nonetheless, because more than one lawyer was required to attend these hearings,  
2 Latham has agreed to write off \$2,305.50, or approximately 13% of the fees that it incurred in  
3 this Category. This write-off also includes \$569.76 in fees for travel-related time allocable to the  
4 Debtor.

5 Attached as Exhibit C-2(h) is a chronological report of the services Latham  
6 provided to the Debtor under this Category during the Application Period. Latham billed 34.71  
7 hours, resulting in \$15,051.90 in fees, which represents less than 1% of the total fees requested  
8 pursuant to this Application. The blended hourly rate for this Category is \$433.65. Latham has  
9 agreed to write-off \$99.36 of its fees for travel-related time allocable to the Debtor that it  
10 incurred in this Category.

11 i. Removal, Remand and Relief from Stay

12 Latham has included in Category 0002(i) time spent in (x) removing the Santa  
13 Clara Action to federal court and responding to New World's motion to remand the Santa Clara  
14 Action to state court and (y) responding to the motion filed by New World seeking relief from  
15 the automatic stay with respect to the Santa Clara Action.

16 Shortly after the Petition Date, PrediWave exercised its statutory right to remove  
17 the Santa Clara Action to federal court. New World responded to the removal of the Santa Clara  
18 Action by filing a motion to remand (the "Remand Motion") [Docket No. 70] and an *ex parte*  
19 motion for order shortening time [Docket No. 68]. Latham attorneys were required to prepare  
20 the Debtor's opposition [Docket No. 94] to the Remand Motion on an expedited basis. The  
21 opposition papers required a detailed description of the factual and procedural background of the  
22 Santa Clara Action and an explanation of the then-existing and anticipated overlapping issues  
23 between the Santa Clara Action and the bankruptcy proceedings. Latham also prepared and filed  
24 a declaration in support of the Debtor's opposition [Docket No. 97], as well as a request to take  
25 judicial notice [Docket No. 100].

26 New World filed on the same day as its motion to remand a motion seeking relief  
27 from the automatic stay (the "Stay Relief Motion") [Docket No. 69] and an *ex parte* motion for  
28 order shortening time [Docket No. 67]. The Debtor resisted the Stay Relief Motion and asked

1 this Court to set a final hearing thereon after the bar date. The Debtor also requested that the  
2 automatic stay be preserved to allow the Debtor and New World to mediate their dispute.

3 Latham spent substantial time and effort researching applicable case law and  
4 drafting the Debtor's opposition [Docket No. 93] to the Stay Relief Motion. Given the complex  
5 procedural posture, Latham was also required to research and address numerous matters, such as  
6 whether the automatic stay tolls the deadline for submitting a deposition transcript *errata* sheet.

7 As with the Debtor's opposition to the Remand Motion, the Debtor's opposition  
8 to the Stay Relief Motion necessarily included a detailed description of the factual and  
9 procedural background of the Santa Clara Action. To avoid unnecessary duplication, Latham  
10 filed a single declaration and a single request for judicial notice in connection with its  
11 oppositions to both the Stay Relief Motion and the Remand Motion.

12 Latham attorneys also spent time preparing for and attending the hearing held  
13 before this Court on May 10, 2006 regarding the Remand Motion and the Stay Relief Motion.

14 Because of the compressed time frame in which Latham was required to respond  
15 to the motions for remand and relief from stay, multiple Latham attorneys assisted in the  
16 preparation of the Debtor's objections leading to some duplication of effort. While Latham  
17 believes that this duplication was unavoidable under the circumstances and that the services it  
18 provided in this Category were reasonable and resulted in tangible benefits for the estate, Latham  
19 has agreed to write-off \$25,335.15, or approximately 11% of the fees that it incurred in this  
20 Category. This write-off also includes approximately \$1,206.80 in fees for travel-related time.

21 Attached as Exhibit C-2(i) is a chronological report of the services Latham  
22 provided to the Debtor under this Category during the Application Period. Latham billed 592.4  
23 hours, resulting in \$215,948.35 in fees (after giving effect to the write-off described above),  
24 which represents 11.3% of the total fees requested pursuant to this Application. The blended  
25 hourly rate for this Category is \$364.53.

26 j. Other Proceedings

27 Latham has included in Category 0002(j) time spent on matters relating to the  
28 Santa Clara Action that does not otherwise fall within one of the Categories set forth above.

1 Included in this Category is time spent by Latham attorneys researching various issues that arose  
2 in connection with the Santa Clara Action, addressing the preliminary injunction and similar  
3 matters in the Santa Clara Action and attending to other matters and proceedings related to the  
4 Santa Clara Action that do not fit within one of the other Categories above. This Category also  
5 includes the time spent by paralegals in maintaining calendar entries and preparing case files and  
6 certain other materials in connection with the Santa Clara Action.

7 A small portion of the time Latham spent in this category related to strategies that  
8 were eventually abandoned. As a result, Latham has agreed to write off \$2,474.01, or  
9 approximately 10% of the fees that it incurred in this Category.

10 Attached as Exhibit C-2(j) is a chronological report of the services Latham  
11 provided to the Debtor under this Category during the Application Period. Latham billed 104.64  
12 hours, resulting in \$22,266.09 in fees (after giving effect to the write-off described above), which  
13 represents approximately 1% of the total fees requested pursuant to this Application. The  
14 blended hourly rate for this Category is \$212.79.

15 3. Allocation of Payment Responsibility for Latham's Fees and Expenses

16 As set forth above, the Debtor and the Other Defendants have allocated the  
17 responsibility for payment of Latham's fees and expenses incurred in the Santa Clara Action,  
18 other than in connection with Category 0002(i) (Removal, Remand and Relief From Stay), as  
19 follows: the Debtor is responsible for 30%, and the Other Defendants are equally responsible for  
20 the remaining 70%. The Debtor and the Other Defendants formulated the Santa Clara Action  
21 Fee Allocation, with input from Latham, based on their reasonable expectations as to how the  
22 Santa Clara Action would proceed and the economic stake that the Debtor and the Other  
23 Defendants had in that action. The Santa Clara Action Fee Allocation was disclosed in the  
24 Special Litigation Counsel Application, and no creditors or other interested parties objected to it  
25 at that time.

26 The Santa Clara Action Fee Allocation has been consistently followed by Latham,  
27 the Debtor and the Other Defendants since the Petition Date. The Debtor's allocated 30%  
28 portion has remained unpaid and accruing to date. With respect to the 70% allocated to the

1 Other Defendants, this portion was paid by them in the ordinary course for services rendered  
2 through September 30, 2006. However, in November 2006, New World obtained orders from  
3 the court in the Santa Clara Action which had the effect of preventing the Other Defendants from  
4 continuing to pay their allocated 70% share of litigation costs. As a result, this amount has also  
5 remained unpaid and accruing to date.<sup>11</sup>

6 In light of the positions taken by New World in opposing the continued payment  
7 by the Other Defendants of their allocated 70% portion, as well as the remarks by the Santa Clara  
8 Court on this issue, Latham requests that this Court either (i) uphold the Santa Clara Action Fee  
9 Allocation, or (ii) adjust such allocation to permit the Debtor to pay 100% of the outstanding  
10 amounts owed to Latham.

11 The activities and matters set forth in Category 0002(i) (Removal, Remand and  
12 Relief from Stay) relate entirely to actions undertaken in this Court or in connection with the  
13 Debtor's chapter 11 case that relate to or arise from the Santa Clara Action. As a result, the fees  
14 and expenses incurred in that Category are allocable to the Debtor and not to the Other  
15 Defendants. Accordingly, by this Application, the Debtor is seeking payment from the Debtor of  
16 one hundred percent (100%) of the fees and expenses in Category 0002(i).

17 4. Amounts Owed by the Debtor and the Other Defendants

18 With respect to the amounts owed to Latham, as of January 31, 2006, the Debtor's  
19 outstanding balance (representing thirty percent (30%) of the fees accrued under Categories  
20 0002(a) through 0002(h) and Category 0002(j) and one hundred percent of the fees accrued  
21 under Category 0002(i)) is \$1,468,884.17, after giving effect to the write-offs described in this  
22 Section IV.B. The Other Defendants' outstanding balance (representing 70% of the fees  
23 incurred after September 30, 2006, through January 31, 2007, in Categories 0002(a) through (h)  
24 and Category 0002(j)) is \$861,641.90.

25  
26  
27 <sup>11</sup> We note that involuntary petitions have been filed against certain of the Debtor's affiliates, and  
28 such cases currently are pending in this Court.

1 In addition to amounts owed for work performed through January 31, 2007,  
2 Latham also requests payment of the Additional Services Estimated Amount of \$25,000. The  
3 Additional Services Estimated Amount is roughly equivalent to the amount of fees and expenses  
4 for work performed in January. The nature of the anticipated additional work in February relates  
5 principally to responding to New World's actions with respect to judgment and execution, and  
6 research and analysis with respect to the pursuit of a potential appeal in the Santa Clara Action.  
7 No later than five (5) days before the hearing on this Application, Latham will file a supplement  
8 setting forth its actual fees and expenses for February 2007.

9 Latham billed 14,391.5 hours to the Debtor and the Other Defendants in Category  
10 0002, resulting in \$4,583,060 in fees. In accordance with the Santa Clara Action Fee Allocation,  
11 and after giving effect to write-offs totaling \$74,932.28 in the aggregate, \$1,468,884.17 of these  
12 fees has been allocated to the Debtor, which represents 77% of the total fees requested pursuant  
13 to this Application. The blended hourly rate for this Category is \$310.41.

14 **C. Category 0003 – Case Administration**

15 Time billed to this Category includes services related to the administration of the  
16 case and services which do not fall within other Categories. Latham assisted the Debtor in  
17 performing its responsibilities under the Bankruptcy Code and the UST Guidelines, reviewed  
18 and monitored the status of the case for the Debtor, and worked with the Debtor and its other  
19 professionals in formulating strategies and responses to the numerous issues, problems and other  
20 matters arising in the case. Many of the services provided by paraprofessionals of Latham are  
21 included in this Category. These services include maintaining a calendar of Court dates and  
22 other events for the case, conducting extensive research on Pacer in response to requests by  
23 Latham attorneys, creditors and other parties in interest to locate pleadings and to maintain  
24 Latham's files, filing pleadings and coordinating the service of motions, notices, orders and  
25 many other pleadings, compiling and updating the list of parties who request special notice in the  
26 case, organizing pleadings and related materials, calendaring hearing dates and preparing and  
27 updating pleading notebooks for matters to be heard in court. Paraprofessionals of Latham also  
28 prepared drafts of certain pleadings, including notices and proposed Orders, and certain of these

1 services were charged to this Category.

2 A portion of the time included in this Category relates to the period in which  
3 KTB&S was familiarizing itself with the chapter 11 case and taking charge of the Debtor's  
4 representation in this case. As a result, this time may be duplicative in part with time spent by  
5 KTB&S. Consequently, Latham has agreed to write-off \$5,233.30, or approximately 20% of the  
6 fees that it incurred in this Category.

7 Attached as Exhibit C-3 is a chronological report of the services Latham provided  
8 to the Debtor under this Category during the Application Period. Latham billed 136.4 hours,  
9 resulting in \$20,933.20 in fees (after giving effect to the write-off described above), which  
10 represents just over 1% of the total fees requested pursuant to this Application. The blended  
11 hourly rate for this Category is \$153.47.

12 **D. Category 0004 – Retention and Fee Matters**

13 1. Retention Matters

14 Time billed to Category 0004(a) relates to the preparation of the Initial  
15 Employment Application, the Supplement and the Special Litigation Counsel Application, and  
16 the hearings concerning the foregoing.

17 Attached as Exhibit C-4(a) is a chronological report of the services Latham  
18 provided to the Debtor under this Category during the Application Period. Latham has agreed to  
19 write-off \$40,724.50 in fees, which represents all of its time relating to the Initial Employment  
20 Application and the Supplement. Latham billed 155.7 hours, resulting in \$29,110 in fees (after  
21 giving effect to the write-off described above), which represents 1.5% of the total fees requested  
22 pursuant to this Application. The blended hourly rate for this Category is \$186.96.

23 2. Fee Matters

24 Time billed to Category Number 0004(b) relates to the preparation of a motion  
25 seeking authority to file Latham's fee applications under seal (the "Fee Seal Motion") [Docket  
26 No. 86], this Application and other matters relating to Latham's fees and compensation. Early in  
27 this case, the Debtor was concerned that New World would be able to ascertain the Debtor's  
28 litigation strategy and would be able to secure an unfair advantage in the Santa Clara Action

1 from the information, and specifically the detailed time records, that Latham would be required  
2 to file with this Court. As a result, the Debtor asked Latham to prepare and file the Fee Seal  
3 Motion. When New World objected to the Fee Seal Motion, Latham agreed with the Debtor  
4 that, instead of expending significant resources in prosecuting the Fee Seal Motion, Latham  
5 would not seek interim compensation of its fees and expenses, but rather would file a final fee  
6 application after the conclusion of the Santa Clara Action. While the work performed by Latham  
7 in connection with the Fee Seal Motion was done at the request of the Debtor and, if prosecuted,  
8 would have provided a benefit to the estate, Latham has agreed to write-off \$11,318.50 in fees,  
9 which relate to the time that it spent on the Fee Seal Motion.

10 Also included in this Category is time spent on this Application, which covers a  
11 period of approximately ten (10) months because Latham did not previously file any interim fee  
12 applications for the reason set forth above.

13 Attached as Exhibit C-4(b) is a chronological report of the services Latham  
14 provided to the Debtor under this Category during the Application Period. Latham billed 142  
15 hours, resulting in \$36,595.50 in fees (after giving effect to the write-off described above). The  
16 blended hourly rate for this Category is \$257.71. As noted above, Latham also seeks the Fee  
17 Application Estimated Amount of \$50,000 which represents Latham's best estimate of the  
18 amounts that it will incur in connection with the preparation of this Application and appearance  
19 at the hearing on this Application. Fees billed to this Category (including estimated fees in the  
20 Fee Application Estimated Amount) represent approximately 4.4% of the total fees sought in this  
21 Application.

22 **E. Category 0005 – Assistance to Debtor and Its Counsel**

23 During the Application Period, Latham provided significant other assistance to  
24 the Debtor and to KTB&S. A significant portion of this assistance was provided to the Debtor in  
25 the early stages of this case when the Debtor was attempting to retain Latham as its general  
26 bankruptcy counsel. While the Initial Employment Application was ultimately denied, a  
27 substantial part of the services that Latham provided before KTB&S was retained were directly  
28 related to the Lawsuits or otherwise provided a significant benefit to this chapter 11 estate. The

1 Debtor would have been required to obtain these services from another law firm if Latham had  
2 not provided this assistance.

3 1. Motions and Court Proceedings

4 Latham expended a significant amount of time and effort in connection with  
5 administrative and contested matters before this Court. Category 0005(a) covers numerous  
6 motions, replies, oppositions, status reports and other pleadings and supporting declarations  
7 drafted and filed on behalf of the Debtor during the Application Period. The time spent by  
8 Latham at the beginning of this case was essential to ensuring a smooth transition for the Debtor  
9 to chapter 11 and to preventing an immediate cessation of the Debtor's business as a result of the  
10 Attachment (as defined below) that New World obtained prior to the Petition Date.

11 As is customary in cases such as this, the Debtor filed several emergency motions  
12 on the Petition Date. These include, without limitation, the Employee Benefits Motion [Docket  
13 No. 10], the Business Forms and Cash Management Systems Motion [Docket No. 12], the  
14 Attachment Motion [Docket No. 14], the Utilities Motion [Docket No. 16], and the Ordinary  
15 Course Professionals Motion [Docket No. 22]. New World filed an omnibus objection to the  
16 Debtor's first day motions [Docket No. 33], as well as specific objections to several of the  
17 Debtor's first day motions. Latham spent a substantial amount of time responding to New  
18 World's objections and preparing for and attending the hearings held before this Court on April  
19 19, 2006 and May 10, 2006.

20 The precipitating cause of this case was the attachment of the Debtor's bank  
21 accounts that New World obtained in the Santa Clara Action. Providing the Debtor with prompt  
22 relief from the attachment was of critical importance in the first few weeks of this case. Latham  
23 spent time researching the relevant issues and negotiating and drafting the stipulated order  
24 releasing the Attachment [Docket No. 55]. Absent these efforts, the Debtor would not have had  
25 access to the resources even to pay its employees and would have been forced immediately to  
26 cease all operations.

27 Attached as Exhibit C-5(a) is a chronological report of the services Latham  
28 provided to the Debtor under this Category during the Application Period. Latham billed 485.6

1 hours to this Category during the Application Period. Latham has agreed to write off \$37,446.50  
2 in fees (or approximately 21% of the time billed to this Category), in recognition of the fact that  
3 (i) the Debtor incurred costs in retaining new counsel and (ii) certain of the strategies that  
4 Latham initiated were not pursued by KTB&S once it became bankruptcy counsel. This write-  
5 off also includes \$1,684 in fees for travel-related time. After giving effect to this write-off,  
6 Latham incurred \$141,365 in fees, which represents 7.4% of the total fees requested pursuant to  
7 this Application. The blended hourly rate for this Category is \$291.11.

8           2.     Communications

9           Category 0005(b) includes time spent meeting and conferring with Committee  
10 counsel, responding to inquiries from creditors and service providers on various matters, and  
11 preparing for and attending the section 341(a) meeting.

12           Shortly after the Petition Date, Latham attorneys participated in several meetings  
13 and phone calls with the U.S. Trustee and/or prospective counsel for the Committee regarding  
14 the status of the case and formation of the Committee. Latham also responded to inquiries from  
15 creditors of, and service providers to, the Debtor to explain the impact of the filing of this case.  
16 In addition, Latham had numerous communications with the Debtor regarding the Debtor's cash  
17 management.

18           Because a small portion of the time set forth in this Category relates to  
19 communications and activities arising from the Debtor's retention of KTB&S as its bankruptcy  
20 counsel, Latham has agreed to write off \$1,137.68, or approximately 5% of the fees that it  
21 incurred in this Category. Attached as Exhibit C-5(b) is a chronological report of the services  
22 Latham provided to the Debtor under this Category during the Application Period. Latham  
23 billed 43.6 hours, resulting in \$21,615.82 in fees (after giving effect to the write-off described  
24 above), which represents just over 1% of the total fees requested pursuant to this Application.  
25 The blended hourly rate for this Category is \$495.78.

26           3.     Schedules and Statements

27           Time billed to Category 0005(c) relates to the preparation of the Schedules and  
28 Statements.

1 Latham worked closely with the Debtor to assemble and prepare information for  
2 the Schedules and Statements. This included traveling to the Debtor's offices in Fremont,  
3 California to meet with employees of the Debtor to interview them and assist them in gathering  
4 all necessary information.

5 Latham reviewed and formatted a large amount of data into a useable form and  
6 ensured that the Debtor was aware of the disclosure requirements imposed on it and took all  
7 reasonable steps to fulfill such requirements.

8 Latham also spent significant time in this Category working with the Debtor to  
9 prepare for the initial interview with the U.S. Trustee and to prepare the initial 15-day package  
10 for the U.S. Trustee. In addition, Latham assisted the Debtor in preparing the monthly operating  
11 report that it filed for the period beginning on the Petition Date and ending April 30, 2006.

12 Attached as Exhibit C-5(c) is a chronological report of the services Latham  
13 provided to the Debtor under this Category during the Application Period. Latham billed 369.4  
14 hours, resulting in \$92,481.50 in fees, which represents 4.8% of the total fees requested pursuant  
15 to this Application. The blended hourly rate for this Category is \$250.36.

16 4. General Corporate

17 Time billed to Category 0005(d) relates to analyzing and addressing issues related  
18 to the Debtor's business and operations in this case.

19 During the Application Period, Latham attorneys attended meetings of the  
20 Debtor's board of directors and prepared memoranda to the Debtor regarding bankruptcy issues.  
21 Latham also conferred with the Debtor regarding the different rules applicable to pre- and post-  
22 petition receivables and expenses.

23 A substantial portion of the time billed to this Category relates to attending to  
24 matters concerning the Debtor's bank accounts to ensure adequate funding to sustain the  
25 Debtor's operations and compliance with the UST Guidelines.

26 Latham has agreed to write off \$9,880.50, or approximately 21% of the fees that it  
27 incurred in this Category because more than one Latham lawyer attended certain meetings of the  
28 Debtor's board and there was some overlap among Latham's lawyers in addressing the Debtor's

1 operational and accounting concerns and issues. This write-off also includes \$636 in travel-  
2 related fees. Attached as Exhibit C-5(d) is a chronological report of the services Latham  
3 provided to the Debtor under this Category during the Application Period. Latham billed 86.2  
4 hours, resulting in \$36,342 in fees (after giving effect to the write-off described above), which  
5 represents approximately 2% of the total fees requested pursuant to this Application. The  
6 blended hourly rate for this Category is \$421.60.

7           5.     Other Assistance to Debtor's Counsel

8           Time billed to Category 0005(e) relates to other assistance that Latham provided  
9 to KTB&S during the pendency of the case. After the Debtor retained KTB&S as its general  
10 bankruptcy counsel, Latham worked closely with KTB&S to ensure a smooth transition of  
11 information and responsibility from Latham to KTB&S.

12           During the Application Period, Latham had extensive interaction with KTB&S  
13 regarding the Lawsuits. In its capacity as special litigation counsel, Latham throughout this case  
14 has had in-depth knowledge of the procedural and substantive posture of the Lawsuits. Latham  
15 shared this knowledge with KTB&S to allow KTB&S most effectively to manage this chapter 11  
16 case and formulate the best legal strategy for the Debtor's estate.

17           Latham also communicated with KTB&S regarding the Debtor's ordinary course  
18 professionals and legal strategy regarding various substantive issues in this chapter 11 case. In  
19 addition, Latham billed time to this Category for assisting with the preparation of the Debtor's  
20 application to retain Allen & Overy to serve as the Debtor's local Hong Kong counsel.

21           Attached as Exhibit C-5(e) is a chronological report of the services Latham  
22 provided to the Debtor under this Category during the Application Period. Latham billed 97.1  
23 hours, resulting in \$44,511 in fees, which represents 2.3% of the total fees requested pursuant to  
24 this Application. The blended hourly rate for this Category is \$456.36. Latham has agreed to  
25 write off \$198.80 in travel related fees in this Category.

26           **F.     Category 0006 – Subordination Litigation**

27           Time billed to this Category relates to the research, preparation and filing of a  
28 complaint seeking to subordinate New World's claims against the Debtor pursuant to section

1 510(a) of the Bankruptcy Code. Attached as Exhibit C-6 is a chronological report of the services  
2 Latham provided to the Debtor under this Category during the Application Period. Latham spent  
3 25.5 hours (which equal \$10,045.50 in fees). However, Latham has agreed to write off all of the  
4 time it incurred in this Category.

5 **V. SUMMARY OF SERVICES RENDERED**  
6 **DURING THE APPLICATION PERIOD**

7 Attached as Exhibit A is a report indicating the names of the Latham  
8 professionals and paraprofessionals who performed services for the Debtor during the  
9 Application Period, the hourly rates charged by each individual, the total hours of service  
10 performed by each person and the total fees requested for each person's service during the  
11 Application Period.

12 Attached as Exhibit B is a schedule which shows the total hours of services  
13 rendered to the Debtor on a monthly basis during the Application Period by Category, the fees  
14 sought by Latham for such services, and the Blended Rate for such services in each Category.  
15 As set forth on Exhibit B, Latham has voluntarily agreed to write-off more than \$190,000 in fees.

16 Attached as Exhibit E are biographies or resumes of the professionals or  
17 paraprofessionals who rendered services to the Debtor in this case. Only professionals or  
18 paraprofessionals who billed over one hundred (100) hours of services in this case during the  
19 Application Period were included.

20 **VI. SUMMARY OF EXPENSES INCURRED**  
21 **DURING THE APPLICATION PERIOD**

22 Latham requests reimbursement of its reasonable expenses incurred in the  
23 ordinary course of Latham's representation of the Debtor during the Application Period. Latham  
24 is seeking reimbursement for \$141,011.96 in expenses that it incurred during the Application  
25 Period. Attached as Exhibit D is a schedule of the total amounts of expenses incurred by Latham  
26  
27  
28

1 during the Application Period for which Latham seeks reimbursement hereunder.<sup>12</sup> Exhibit D  
2 also identifies expenses in the amount of \$17,456.16 which Latham would normally charge its  
3 clients, but which Latham is not seeking to be reimbursed for in connection with this case.  
4 Latham has contracted with a third-party vendor to provide certain “in-house” services, including  
5 duplication, facsimile and delivery services. Latham clients, including the Debtor, are charged  
6 for these services at the rates that Latham has been able to negotiate with this third-party vendor  
7 (without any additional mark-up, except as described below with respect to Federal Express,  
8 messenger services and certain computerized research services). The total expenses billed to the  
9 Debtor in this case are consistent with, or, as noted below, more favorable than, Latham’s  
10 practice in non-bankruptcy matters. The expenses for which Latham seeks reimbursement are as  
11 follows:

12 **A. Binding and Assembling**

13 Consistent with its normal practice in non-bankruptcy matters, Latham charged  
14 the Debtor for costs incurred in binding and assembling documents in connection with document  
15 preparation for filing with the Court in this case, as well as for binding and assembling costs  
16 incurred in the Lawsuits and for other purposes. Latham incurred \$185.28 in costs relating to  
17 binding and assembling.

18 **B. Computerized Research**

19 Consistent with its normal practice in non-bankruptcy matters, Latham charged  
20 the Debtor for its out-of-pocket costs incurred in performing legal research. Lexis and Westlaw  
21 computerized legal research charges are billed at Latham’s contracted rate. Certain other  
22 computerized legal research services are billed at Latham’s volume discounted contracted rate  
23 times 1.25 to cover Latham’s direct and indirect costs associates with those services. Latham  
24 charges this rate to its non-bankruptcy clients. Latham incurred \$28,046.06 in the aggregate for  
25 Lexis, Westlaw and other database research.

26  
27 <sup>12</sup> The schedule attached hereto as Exhibit D reflects adjustment of expenses billed under the Category  
28 0002 based on the Santa Clara Action Fee Allocation.

1           **C.     Depositions**

2                     Latham charged the Debtor for costs incurred by Latham in connection with  
3 several depositions conducted during discovery in the Los Angeles and Santa Clara Actions.  
4 Latham incurred \$1,753.12 for deposition transcription services, \$5,840.80 for preparation of  
5 deposition transcript summaries and \$7,374.43 for duplication of deposition videotapes. Latham  
6 incurred a total of \$14,968.35 in costs relating to depositions.

7           **D.     Dining Service**

8                     During the Application Period, Latham conducted a number of meetings at  
9 Latham’s Silicon Valley offices. Latham provided meals to the Debtor’s personnel at those  
10 meetings. Latham incurred dining service charges of \$476.40 in connection with these meals for  
11 which Latham seeks to be reimbursed.<sup>13</sup>

12           **E.     Filing Fees**

13                     Consistent with its normal practice in non-bankruptcy matters, Latham charged  
14 the Debtor expenses it incurred in connection with filing pleadings with the Los Angeles and  
15 Santa Clara Courts in the Lawsuits, the U.S. Bankruptcy Court in Oakland in this case and for  
16 research conducted at the same courthouses by attorney services. Latham incurred \$3,102.76 in  
17 filing fees and \$940.65 in docket research fees.

18           **F.     Outside Services (Non-attorney)**

19                     Latham charged the Debtor expenses attributable to the temporary employment of  
20 para-paraprofessionals for staged/phased document productions during discovery in the  
21 Lawsuits. Latham also utilized notaries to certify certain documents during these same  
22 proceedings. Latham incurred \$21,567.71 relating to the use of temporary paraprofessionals and  
23 notaries through outside services.

24  
25  
26 <sup>13</sup> During the Application Period, Latham incurred expenses for local meals provided to Latham  
27 personnel (whether during the day or for after-hours work) totaling \$3,004.38. Latham has  
28 voluntarily agreed not to charge the Debtor for these meals even though it typically charges its non-  
bankruptcy clients for this expense.

1           **G. Overnight Delivery, Messenger Fees and Postage**

2           Consistent with its normal practice in non-bankruptcy matters, Latham charged  
3 the Debtor the reasonable expenses attributable to the mailing and delivery of documents. In this  
4 case, the postage charges only include the out-of-pocket postage attributable to large  
5 distributions mailed by Latham. The messenger charges and overnight courier charges by  
6 Federal Express represent the negotiated value discount enjoyed by Latham times a factor of  
7 1.10. This factor is designed to cover the additional personnel and equipment costs, which are  
8 necessary to enable such volume discounts. Latham believes that the rate it charges to the  
9 Debtor is less than the rate which would be charged by the service providers to users of their  
10 services who do not qualify for the discounted rates made available to Latham. In addition,  
11 Latham charges the same rates to its non-bankruptcy clients. Latham incurred \$1,131.44 in  
12 Federal Express charges, \$3,018.89 in messenger fees and \$284.59 in postage, totaling \$4,434.92  
13 in costs relating to overnight delivery, messenger fees and postage.

14           **H. Photocopies and Scanning**

15           Consistent with its customary billing practice in non-bankruptcy matters and the  
16 contract that it has negotiated with the third-party contractor that provides its in-house copying  
17 services, Latham charged the Debtor for photocopying charges at a rate of \$0.17 per page for  
18 regular photocopying. Latham incurred \$19,004.13 in regular photocopies, \$419.30 in color  
19 copying, \$111.53 in scanning costs related to scanning of voluminous documents for electronic  
20 mail distribution, and \$7,968.81 in document copying completed by outside copy service  
21 vendors totaling \$27,503.77 in costs relating to photocopies and scanning.

22           **I. Process Service**

23           Consistent with its customary billing practice in non-bankruptcy matters, Latham  
24 charged the Debtor for process service costs incurred in connection with service of trial papers  
25 and briefings upon the Court in the Santa Clara Action. Latham incurred \$267.45 in costs  
26 relating to process service.

27           **J. Telecopies**

28           Latham's regular charge for telecopies in non-bankruptcy cases is \$1.25 per page

1 for outgoing telecopies, which is the same rate that it charges to its non-bankruptcy clients and  
2 the rate that it is charged by the third-party contractor that provides all of its facsimile services.  
3 Latham did not charge the Debtor for incoming telecopies. Latham incurred \$4,233.24 in  
4 telecopy charges.

5 **K. Telephone**

6 Consistent with its practice in non-bankruptcy matters, Latham charged the  
7 Debtor for long distance telephone charges incurred for the benefit of the Debtor at the rate at  
8 which Latham is charged by its long distance provider. Latham incurred \$3,259.14 in telephone  
9 long distance charges.

10 **L. Translation Services**

11 Latham utilized Chinese translation services in connection with document review  
12 and production, and certain written client correspondence. In addition, Latham utilized real-time  
13 Chinese oral translation in connection with numerous depositions taken in the Lawsuits, as well  
14 as during certain oral client communications and during settlement discussions with New World.  
15 Latham incurred \$1,352.17 in costs relating to translation services.

16 **M. Transportation**

17 Consistent with its normal practice in non-bankruptcy matters, Latham charged  
18 the Debtor for costs incurred in connection with transportation to and from court hearings and  
19 meetings held outside the Latham offices. Latham incurred \$2,920.63 in ground transportation  
20 and \$1,310.25 in parking,<sup>14</sup> for total transportation expenses of \$4,230.88.

21 **N. Travel Expenses**

22 Consistent with its practice in non-bankruptcy matters, Latham charged the  
23 Debtor for airfare and travel expenses in connection with travel to and from Northern California  
24 to attend Court hearings and meetings at Latham offices and Debtor's offices. Latham also  
25 incurred airfare and travel expenses in connection with travel to and from Hong Kong and

26 \_\_\_\_\_  
27 <sup>14</sup> Latham has voluntarily written-off \$197.32 in mileage charges notwithstanding the fact that  
28 it typically charges its non-bankruptcy client for all mileage (and not just for travel of one  
hour or more as provided in the Northern District Guidelines).

1 several locations in the United States to participate in depositions during the discovery portion of  
2 the Lawsuits. Latham incurred \$8,028.08 in airfare and \$18,415.10 in other travel expenses  
3 including lodging and meals while traveling, for total travel-related expenses of \$26,443.18.

4 **O. Voluntary Expense Reduction**

5 As shown in Exhibit D, for the Application Period, Latham has voluntarily  
6 reduced the expenses for which it is seeking to be reimbursed by \$17,456.16 that relate to  
7 supplies and office expenses, document preparation and support, mileage, local meals and  
8 overtime and double time paid to document support and staff members. Latham normally is  
9 reimbursed for these services by its non-bankruptcy clients. Nonetheless, consistent with the  
10 UST Guidelines and the Northern District Guidelines, Latham is not seeking reimbursement for  
11 these expenses in this case.

12 **VII. CONCLUSION**

13 For the above reasons, under applicable legal standards Latham is entitled to  
14 receive a final award of compensation in this case in the amounts set forth in this Application. In  
15 accordance with Bankruptcy Rule 2016, Latham hereby confirms to the Court that (a) all  
16 professional services for which compensation is requested by Latham were performed by Latham  
17 for or on behalf of the Debtor and (b) no agreement or understanding exists between Latham and  
18 any other person for the division of fees requested by this Application.

19 WHEREFORE, Latham respectfully requests that this Court enter an order:

20 (a) ratifying and approving the Santa Clara Action Fee Allocation or, in the  
21 alternative, adjust such allocation so that the Debtor can (and will be required to) pay all of the  
22 fees associated with the Santa Clara Action (subject to the write-offs described herein);

23 (b) awarding Latham final compensation for services rendered during the  
24 Application Period, from April 14, 2006 through January 31, 2007, in the amount of  
25 \$1,911,214.40;

26 (c) awarding Latham final reimbursement for expenses incurred during the  
27 Application Period, from April 14, 2006 through January 31, 2007, in the amount of  
28 \$141,011.96;



1                                    **DECLARATION OF JOHN C. TANG IN SUPPORT OF APPLICATION**

2                                    I, John C. Tang, declare:

3                                    1.        I am an attorney admitted to practice law in the State of California and  
4 before this Court and am a partner in the law firm of Latham & Watkins LLP (“Latham”),  
5 special litigation counsel for PrediWave Corporation (the “Debtor”). In that capacity, I am  
6 primarily responsible for Latham’s representation of the Debtor. The matters stated hereinafter  
7 are within my own personal knowledge and, if called as a witness, I could and would  
8 competently testify thereto.

9                                    2.        I have reviewed, participated in the preparation of and supervised the  
10 preparation of the First and Final Application of Latham & Watkins LLP for Allowance and  
11 Payment of Compensation for Services Rendered and Reimbursement of Expenses Incurred as  
12 Special Litigation Counsel to Debtor and Debtor In Possession for the Period April 14, 2006  
13 through January 31, 2007 (the “Application”).

14                                    3.        I have personal knowledge of the facts set forth in the Application as they  
15 relate to the events that occurred during the Debtor’s bankruptcy case and my own activities. As  
16 to services by other professionals in my firm, I reviewed the description of such services in  
17 Latham’s business records, which are kept in the ordinary course of business, recorded at or near  
18 the time of the event described, and for which I am one of the custodians of record.

19                                    4.        To the best of my knowledge, information and belief, the facts stated in  
20 the Application are true and correct as set forth herein.

21                                    5.        Latham has not been paid or promised any compensation from any source  
22 for services rendered in connection with the Debtor’s bankruptcy case other than as allowed by  
23 this Court.

24                                    6.        To the best of my knowledge, information and belief, the compensation  
25 and expense reimbursement sought in the Application is in conformity with the Northern District  
26 Guidelines and the UST Guidelines.

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7. The compensation and expenses sought in the Application were billed at rates no less favorable than those customarily billed by Latham and generally accepted by its clients.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26<sup>th</sup> day of February 2007, at Menlo Park, California.

/s/ John C. Tang  
John C. Tang

**EXHIBIT A**

**PrediWave Corporation**  
**Summary of Professional Fees**  
**(Descending Order of Rate)**  
**(April 14, 2006 to January 31, 2007)**

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
<b><i>Partners/Of Counsel:</i></b>			
Michael S. Lurey	\$795.00	1.70	\$1,351.50
		1.70	\$1,351.50
Paul H. Dawes	\$775.00	106.40	\$32,170.25
		106.40	\$32,170.25
Christopher L. Kaufman	\$725.00	3.50	\$2,182.25
		3.50	\$2,182.25
Steven M. Bauer	\$675.00	0.50	\$101.25
		0.50	\$101.25
Robert A. Klyman	\$675.00	94.90	\$62,970.75
		94.90	\$62,970.75
Gregory O. Lunt	\$675.00	12.00	\$8,100.00
	\$595.00	217.00	\$126,491.05
		229.00	\$134,591.05
James K. Lynch	\$675.00	5.00	\$2,193.75
	\$595.00	203.50	\$41,780.90
		208.50	\$43,974.65
Daniel S. Schechter	\$675.00	4.50	\$2,423.25
	\$595.00	569.80	\$136,903.55
		574.30	\$139,326.80
Ora T. Fisher	\$625.00	0.50	\$93.75
		0.50	\$93.75
John C. Tang	\$625.00	15.50	\$6,931.25
	\$550.00	275.70	\$63,239.00
		291.20	\$70,170.25
Patrick E. Gibbs	\$595.00	145.90	\$38,371.55
		145.90	\$38,371.55
Robert E. Sims	\$595.00	0.20	\$35.70
		0.20	\$35.70

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Linda M. Inscoe	\$575.00	0.10	\$17.25
		0.10	\$17.25
Darius D. Ogloza	\$575.00	0.50	\$86.25
		0.50	\$86.25
Kristine L. Wilkes	\$575.00	1.90	\$408.25
		1.90	\$408.25
Daiske Yoshida	\$560.00	0.20	\$33.60
		0.20	\$33.60
Matthew Rawlinson	\$550.00	95.60	\$15,774.00
		95.60	\$15,774.00
Amos E. Hartston	\$525.00	28.40	\$4,473.00
		28.40	\$4,473.00
	<i>Total of Partners/Of Counsel:</i>	1,783.30	
	<i>Amount Allocated to Debtor:</i>	900.32	\$546,132.10

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
<b>Associates:</b>			
Kuang Hung Tang	\$515.00	0.50	\$257.50
		0.50	\$257.50
David M. Friedman	\$495.00 \$430.00	8.30	\$2,168.10
		916.10	\$166,788.40
		924.40	\$168,956.50
Alan L. Leavitt	\$450.00 \$385.00	3.50	\$1,575.00
		136.70	\$50,769.95
		140.20	\$52,344.95
Shannon M. Eagan	\$430.00	252.50	\$34,860.10
		252.50	\$34,860.10
Heather L. Mayer	\$430.00	26.50	\$4,381.70
		26.50	\$4,381.70
David C. Fortney	\$425.00 \$360.00	1.30	\$165.75
		727.80	\$101,055.60
		729.10	\$101,221.35
Jennie F. Feldman	\$410.00	243.80	\$42,615.40
		243.80	\$42,615.40
Heather E. Marlow	\$410.00	655.30	\$94,291.80
		655.30	\$94,291.80
Philip J. Wang	\$410.00	722.80	\$100,585.30
		722.80	\$100,585.30
Peter T. Snow	\$410.00	0.40	\$135.30
		0.40	\$135.30
Emily L. Dahm	\$395.00 \$320.00	5.80	\$687.30
		963.20	\$93,475.20
		969.00	\$94,162.50
Christopher D. Hazuka	\$385.00	2.70	\$311.85
		2.70	\$311.85
Samir D. Parikh	\$385.00	14.70	\$5,659.50
		14.70	\$5,659.50
Brenna R. Adler	\$360.00	157.00	\$16,956.00
		157.00	\$16,956.00

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Xochitl D. Arteaga	\$360.00	892.50	\$96,390.00
		892.50	\$96,390.00
C. Smith	\$360.00	19.80	\$4,305.60
		19.80	\$4,305.60
Indira E. Smith	\$360.00	92.50	\$33,300.00
		92.50	\$33,300.00
Risha M. Jamison	\$360.00	946.00	\$102,168.00
		946.00	\$102,168.00
Kory S. Sorrell	\$360.00	33.90	\$3,661.20
		33.90	\$3,661.20
Samuel D. Almon	\$320.00	272.10	\$56,563.20
		272.10	\$56,563.20
Jarod J. Buna	\$320.00	2.70	\$864.00
		2.70	\$864.00
D. Conklin	\$320.00	81.20	\$9,072.00
		81.20	\$9,072.00
Melanie S. Rowen	\$320.00	1.50	\$144.00
		1.50	\$144.00
Shanaira Udwadia	\$320.00	506.20	\$55,606.40
		506.20	\$55,606.40
Blake E. Williams	\$320.00	0.40	\$38.40
		0.40	\$38.40
Jonathan F. Beardsley	\$285.00	55.70	\$4,762.35
		55.70	\$4,762.35
Elizabeth M. Bennion	\$285.00	210.30	\$17,980.65
		210.30	\$17,980.65
J. Bradley Carrick	\$285.00	151.70	\$12,970.35
		151.70	\$12,970.35
Laurie Chreitzberg	\$285.00	50.00	\$4,275.00
		50.00	\$4,275.00
Mark J. Drury	\$285.00	18.80	\$1,607.40
		18.80	\$1,607.40

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Michael E. Elisofon	\$285.00	315.10	\$27,000.90
		315.10	\$27,000.90
Robb W. Kapla	\$285.00	19.50	\$1,667.25
		19.50	\$1,667.25
Anita Pancholi	\$285.00	0.50	\$42.75
		0.50	\$42.75
Svetlana C. Vas	\$285.00	6.40	\$1,824.00
		6.40	\$1,824.00
Randi L. Wallach	\$285.00	19.20	\$1,641.60
		19.20	\$1,641.60
Raffi Djihanian	\$250.00	19.00	\$4,750.00
		19.00	\$4,750.00
Jeanette L. Brown	\$250.00	6.00	\$450.00
		6.00	\$450.00
Micah Nash	\$250.00	7.40	\$555.00
		7.40	\$555.00
Heather Thompson	\$250.00	5.80	\$435.00
		5.80	\$435.00
<i>Total of Associates:</i>		8,573.10	
<i>Amount Allocated to Debtor:</i>		3,168.47	\$1,158,814.80

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
<b><i>Para-Professionals and Other Professionals:</i></b>			
Patrick Ferguson	\$250.00	7.20	\$540.00
		7.20	\$540.00
Jeannie Lee	\$250.00	9.60	\$720.00
		9.60	\$720.00
Kirsten M. Lindee	\$250.00	12.70	\$952.50
		12.70	\$952.50
Seth Pritikin	\$250.00	17.60	\$1,320.00
		17.60	\$1,320.00
Stephanie Wells	\$250.00	21.30	\$1,597.50
		21.30	\$1,597.50
Eileen M. Longo	\$240.00	10.40	\$1,605.60
	\$220.00	170.80	\$14,691.60
		181.20	\$16,297.20
Kathryn Bowman	\$230.00	194.80	\$44,804.00
		194.80	\$44,804.00
Frank Lee	\$230.00	5.00	\$345.00
		5.00	\$345.00
Frances Kipp	\$230.00	0.30	\$20.70
	\$205.00	7.10	\$436.65
		7.40	\$457.35
Catherine H. Meller	\$230.00	1.00	\$230.00
	\$205.00	1.50	\$92.25
		2.50	\$322.25
Celeste N. Bucciarelli	\$220.00	653.70	\$47,102.00
		653.70	\$47,102.00
Colleen M. Greenwood	\$220.00	53.90	\$11,858.00
	\$200.00	275.10	\$55,020.00
		329.00	\$66,878.00
Rose M. Adams	\$205.00	15.30	\$940.95
		15.30	\$940.95
Marta De Paula Cea	\$205.00	1.90	\$317.75
		1.90	\$317.75

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Amy M. Fritz	\$205.00	0.50	\$30.75
		0.50	\$30.75
William F. Kirchoff, II	\$205.00	3.30	\$202.95
		3.30	\$202.95
Karen L. O'Donnell	\$205.00	0.80	\$49.20
		0.80	\$49.20
Karen L. Ward	\$205.00	41.90	\$6,264.80
		41.90	\$6,264.80
Valeriano Trinidad	\$185.00	3.70	\$205.35
		3.70	\$205.35
Jaikaran Bhalla	\$180.00	875.70	\$47,464.20
		875.70	\$47,464.20
Angela L. De Avila	\$180.00	32.80	\$1,771.20
		32.80	\$1,771.20
Yolanda M. Ugay	\$180.00	9.80	\$529.20
		9.80	\$529.20
Erin S. Matas	\$175.00	1.00	\$52.50
		1.00	\$52.50
Anna Moren	\$175.00	10.00	\$525.00
	\$160.00	622.50	\$32,153.60
		632.50	\$32,678.60
Michael K. Soriano	\$175.00	0.50	\$87.50
		0.50	\$87.50
Hiroko WakelingOgawa	\$175.00	1.90	\$99.75
		1.90	\$99.75
M. Chan	\$165.00	4.50	\$222.75
		4.50	\$222.75
Robert N. Silverman	\$165.00	2.70	\$133.65
		2.70	\$133.65
Larry G. Carlson	\$160.00	222.90	\$11,326.40
		222.90	\$11,326.40
Vanessa C. De Brer	\$160.00	3.00	\$144.00
		3.00	\$144.00

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Gillian P. Phillips	\$155.00	285.30	\$13,472.60
	\$135.00	9.00	\$364.50
		294.30	\$13,837.10
William P. Kee	\$155.00	106.10	\$5,096.40
	\$135.00	178.60	\$7,535.70
		284.70	\$12,632.10
Taraneh Khodabakhshi	\$155.00	1.90	\$88.35
	\$140.00	62.30	\$2,910.60
		64.20	\$2,998.95
Aldo Camacho	\$150.00	11.50	\$517.50
		11.50	\$517.50
Elita Chang	\$150.00	27.70	\$1,246.50
		27.70	\$1,246.50
Sam Chi	\$150.00	5.70	\$256.50
		5.70	\$256.50
Amanda Gough	\$150.00	12.70	\$571.50
	\$125.00	149.60	\$6,003.75
		162.30	\$6,575.25
Rachel E. Mara	\$150.00	160.80	\$7,236.00
	\$125.00	134.10	\$5,028.75
		294.90	\$12,264.75
Robert Orwat	\$150.00	17.00	\$765.00
		17.00	\$765.00
Leonard R. Perez	\$150.00	8.80	\$648.00
		8.80	\$648.00
Matthew P. Popovich	\$150.00	90.60	\$4,077.00
		90.60	\$4,077.00
Gina R. Tercero	\$150.00	0.50	\$22.50
		0.50	\$22.50
Phillip Phinney	\$140.00	0.30	\$42.00
		0.30	\$42.00
Claudia M. Barberena	\$135.00	146.80	\$19,789.65
		146.80	\$19,789.65

<u>Timekeeper</u>	<u>Rate(s)</u>	<u>Hours</u>	<u>Fees Allocated to Debtor</u>
Adriana A. Cole	\$135.00	50.50	\$3,084.75
		50.50	\$3,084.75
Adrianna Gonzalez	\$135.00	188.50	\$7,983.90
		188.50	\$7,983.90
Fayiza Abbas	\$125.00	15.10	\$566.25
		15.10	\$566.25
Andrew Farris	\$125.00	1.00	\$37.50
		1.00	\$37.50
Crystal Nagaya	\$125.00	34.00	\$1,275.00
		34.00	\$1,275.00
My Ngo	\$125.00	518.10	\$20,085.00
		518.10	\$20,085.00
Malgorzata M. Olszowka	\$125.00	20.90	\$783.75
		20.90	\$783.75
Katarzyna Schmidt	\$125.00	97.60	\$3,660.00
		97.60	\$3,660.00
Gerald V. Nol	\$120.00	3.30	\$118.80
		3.30	\$118.80
Hector Munoz	\$100.00	0.60	\$60.00
		0.60	\$60.00
<i>Total of Para-Professionals and Other Professionals:</i>		5,635.60	
<i>Amount Allocated to Debtor:</i>		2,263.84	\$397,185.05
<b>Grand Totals:</b>		15,992.00	
<b>Amount Allocated to Debtor:</b>		6,332.63	\$2,102,131.95
<b>Write-Offs:</b>			(\$190,917.55)
<b>Total After Write-Offs:</b>			\$1,911,214.40