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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 In re
12 **PREDI WAVE CORPORATION,**
a California corporation,
13
14 Debtor

Case No.: 06-40547 (RJN)

Chapter 11

**SECOND INTERIM APPLICATION
OF PACHULSKI STANG ZIEHL
YOUNG JONES & WEINTRAUB LLP
FOR APPROVAL OF
COMPENSATION AND
REIMBURSEMENT OF EXPENSES
FOR THE PERIOD SEPTEMBER 1,
2006 THROUGH DECEMBER 31, 2006**

Date: To Be Announced
Time: To Be Announced
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 215
Oakland, CA
Judge: Honorable Randall J. Newsome

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1 Pachulski Stang Ziehl Young Jones & Weintraub LLP (“PSZYJ&W” or the “Firm”) hereby
2 submits its Second Interim Application for Allowance and Payment of Compensation and
3 Reimbursement of Expenses for the Period September 1, 2006 through December 31, 2006, (the
4 “Application”) in connection with its representation of the Official Committee of Unsecured
5 Creditors (the “Committee”) in the above-referenced chapter 11 case.

6 The Firm seeks interim approval of compensation and reimbursement totaling \$33,103.24¹
7 which sum represents compensation for legal services rendered in the amount of \$31,810.00 and
8 reimbursement for expenses incurred in the amount of \$3,293.24 for the period September 1, 2006
9 through December 31, 2006 (the “Application Period”), less a \$2,000 reduction previously ordered
10 by the Court.

11 PSZYJ&W submits this Application pursuant to sections 330 and 331 of title 11 of the
12 United States Code (the “Bankruptcy Code”), Rule 2016 of the Federal Rules of Bankruptcy
13 Procedure (“Bankruptcy Rules”), the *Guidelines for Compensation and Expense Reimbursement of*
14 *Professionals and Trustees* (“Northern District Guidelines”), and the *United States Trustee*
15 *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed*
16 *Under 11 U.S.C. § 330* (“UST Guidelines”), and the Local Bankruptcy Rules for the Northern
17 District of California.

18 The Application is based upon the attached exhibits, including the declaration of John D.
19 Fiero filed concurrently herewith, the pleadings on file in the Debtor’s case, and any evidence and
20 oral argument that the Court may entertain at the time of the hearing on the Application.

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¹ This amount reflects the \$2,000 reduction ordered by the Court on December 13, 2006.

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FEE SUMMARY

Names of Professionals and Paraprofessionals	Hours Billed this Period	Rate	Total for Application
John D. Fiero	68.20	450	\$30,690.00
Leslie Ann Forrester	4.10	175	\$ 717.50
Patricia J. Jeffries	2.30	175	\$ 402.50
Subtotal			\$31,810.00
Less Court Ordered Reduction			< \$2,000.00 >
Total	74.60		\$29,810.00
Blended Rate		399.60	

EXPENSE SUMMARY

Expense	Rate	Total
Conference Call	Actual Cost	\$ 42.90
Delivery/Courier	Actual Cost	\$ 144.11
Incoming Fax	@ \$1.00 per page	\$ 4.00
Pacer	Actual Cost	\$ 229.55
Postage	Actual Cost	\$1,808.36
Reproduction Expense	Actual Cost	\$ 894.20
Westlaw	Actual Cost	\$ 170.12
Total		\$3,293.24

I.

INTRODUCTORY FACTS

On April 14, 2006, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Based on technology that enables the delivery of video-on-demand over a one-way cable network, the Debtor designs and sells a content delivery system for use by broadband digital service providers, such as cable and satellite television operators. The Debtor continues to operate its business and manage its property as a debtor in possession. On May 3, 2006, the United States Trustee (the "UST") appointed the Committee in this case pursuant to section 1102 of the Bankruptcy Code, and added two members to the Committee on May 5, 2006. Since then, two members have left the committee: one resigned and one was removed by the United States Trustee upon the request of the Committee. No trustee, examiner, or other committee has been appointed in this case.

II.

EMPLOYMENT OF PSZYJ&W

A. Background and Approval of Employment

The members of the Committee are Flash Electronics, Sutter Hill Investors, and Advanced Discovery Systems.²

PSZYJ&W is a law firm with offices in San Francisco and Los Angeles, California, Wilmington, Delaware, and New York, New York. The Firm currently employs approximately 55 attorneys and specializes in business reorganizations, bankruptcy, commercial law, and litigation. On May 8, 2006, the Committee selected the Firm as its bankruptcy counsel. Following the selection of the Firm as Committee counsel, the Firm and the Committee immediately attended to Committee business. The retention order approving PSZYJ&W's employment as counsel for the Committee *nunc pro tunc* to May 8, 2006 was entered on May 31, 2006. A copy of the retention order is attached hereto as **Exhibit A**.

On August 11, 2006, the Court entered an Order Approving Motion for Authority to Establish Procedures for Interim Payment of Fees and Reimbursement of Expenses (the "Interim

² Computer Modules has resigned from the Committee. Kabir Rahman has been removed from the Committee.
70924-001\DOCS_SF:53208.1

1 Payment Order”).

2 **B. Prior Compensation Requested by PSZYJ&W**

3 On October 2, 2006, the Firm filed its *First Interim Application of Pachulski Stang Ziehl*
4 *Young Jones & Weintraub LLP for Approval of Compensation and Reimbursement of Expenses for*
5 *the Period Ended August 31, 2006* (the “First Interim Application”), requesting approval of
6 compensation and reimbursement of expenses in the amount of \$48,446.43 consisting of \$43,799.00
7 in fees and reimbursement of \$4,647.43 in expenses incurred during the period ending August 31,
8 2006 (the “First Interim Fee Period).

9 On December 20, 2006, the Court entered an order approving the First Interim Application
10 [Docket No. 382], and reduced the amount of fees sought by the Firm by \$2,000.00, and directed the
11 Debtor to reduce its next monthly payment to the Firm by \$2,000.00. This reduction is reflected in
12 this Application.

13 This Application represents PSZYJ&W’s second request for interim approval of its fees and
14 expenses. Pursuant to the Interim Payment Order, PSZYJ&W has received \$21,387.66 thus far as
15 payment for services rendered and reimbursement of costs incurred during the Application Period.

16 **C. Summary of Compensation Requested by PSZYJ&W**

17 This Application is PSZYJ&W’s second interim application for compensation and
18 reimbursement of expenses. This Application seeks approval of interim compensation for services
19 rendered for the Committee, in the amounts invoiced for the Application Period. As discussed in
20 more detail below, the Firm seeks interim approval of compensation and reimbursement of expenses
21 in the amount of \$33,103.24 consisting of \$29,810.00 in fees and reimbursement of \$3,293.24 in
22 expenses incurred during the Application Period.

23 **III.**

24 **PROJECT BILLING AND NARRATIVE STATEMENT OF SERVICES RENDERED**

25 In accordance with the Northern District Guidelines and UST Guidelines, PSZYJ&W
26 classified all services for which compensation is sought into categories. PSZYJ&W attempted to
27 place the services performed in the category that best relates to the service provided. However,
28 because certain services may relate to one or more categories, services pertaining to one category

1 may, in fact, be included in another category. PSZYJ&W has established the following billing
2 categories:

- 3 • Asset Analysis
- 4 • Case Administration
- 5 • Claims Administration/Objections
- 6 • Compensation of Professionals
- 7 • Plan/Disclosure Statement
- 8 • Retention of Professionals

9 **Exhibit B** provides a detailed breakdown of the time entries and expenses incurred during
10 the Application Period.

11 In accordance with the Northern District Guidelines, the following are the narratives for each
12 category of project billing, discussing projects and tasks.

13 **A. Asset Analysis**

14 The Firm spent minimal time in this category reviewing and analyzing the preference report
15 prepared by XRoads.

16 **Total Hours 1.30/Total Fees \$585.00**

17 **B. Case Administration**

18 Time billed to this category primarily relates to preparing for and conducting meetings with
19 the Committee, as well as communication with Committee members and creditors, and other general
20 tasks arising from the Firm's representation of the Committee. In addition, but not limited to, the
21 Firm also spent time in this category monitoring the developments in the Santa Clara action
22 involving New World, and reviewing and analyzing the stipulation for dismissal of the bankruptcy
23 case drafted by counsel for the Debtor at the suggestion of New World. This is the largest category
24 because monitoring of the New World litigation and negotiating with New World and the Debtor in
25 the wake of the \$2.8 billion default judgment entered against the Debtor and its affiliates has been
26 the primary case activity during the Application Period.

27 **Total Hours 43.80/Total Fees \$18,582.50**

28 **C. Claims Administration/Objections**

The Firm spent minimal time in this category reviewing the supplemental claims bar date
notice, claims filed after the supplemental bar date, and reviewing and discussing the need for

1 further claims analysis with XRoads with respect to the supplemental bar date.

2 **Total Hours 3.70/Total Fees \$1,665.00**

3 **D. Compensation of Professionals**

4 Time billed to this category primarily relates to the preparation of the Firm's monthly interim
5 fee applications. In addition, the Firm billed time to this category for preparing its First Interim
6 Application, and reviewing the first interim applications of the other professionals employed in the
7 case, as well as appearing at the hearing thereon.

8 **Total Hours 19.10/Total Fees \$7,962.50**

9 **E. Plan and Disclosure Statement**

10 Time billed to this category relates to communications with New World and the Debtor
11 regarding a consensual resolution of the case and negotiations relating to the extension of the
12 exclusivity period, and the review and execution of a stipulation extending exclusivity.

13 **Total Hours 6.40/Total Fees \$2,880.00**

14 **F. Retention of Professionals**

15 The Firm spent minimal time in this category reviewing the application to employ Ashai
16 Koma as counsel for the Debtor's Japanese operations.

17 **Total Hours .30/Total Fees \$135.00**

18 **G. List of Expenses by Category**

19 PSZYJ&W advanced costs, including certain in-house charges, on behalf of the Committee
20 in connection with the performance of the services described in this Application. During the
21 Application Period, PSZYJ&W incurred a total of \$3,293.24 in expenses. PSZYJ&W made every
22 effort to keep the costs in this case to a minimum.

23 PSZYJ&W customarily charges \$0.20 per page for photocopying expenses. PSZYJ&W's
24 photocopying machines automatically record the number of copies made when the person that is
25 doing the copying enters the client's account number into a device attached to the copier.
26 PSZYJ&W summarizes each client's photocopying charges on a daily basis. Whenever feasible,
27 PSZYJ&W sends large copying projects to an outside copy service that charges a reduced rate for
28 photocopying.

1 Ordinarily, PSZYJ&W charges \$1.00 per page for out-going facsimile transmissions.
2 Pursuant to the Northern District Guidelines, however, PSZYJ&W has agreed not to charge for
3 outgoing facsimiles. Fax receipts are charged at \$0.20 per page, the same cost as PSZYJ&W
4 charges for photocopies.

5 Regarding providers of on-line legal research (e.g., LEXIS and Westlaw), PSZYJ&W
6 charges the standard usage rates these providers charge for computerized legal research. PSZYJ&W
7 bills its clients the actual amount charged by such services, with no premium. Any volume discount
8 received by PSZYJ&W is passed on to the client. PSZYJ&W does not charge for local or long
9 distance calls placed by attorneys from their offices. PSZYJ&W only bills its clients for the actual
10 costs charged to PSZYJ&W by teleconferencing services in the event that a multiple party
11 teleconference is initiated through PSZYJ&W. PSZYJ&W believes that its expense charges are
12 consistent with the American Bar Association's ("ABA") guidelines, as set forth in the ABA's
13 Statement of Principles, dated January 12, 1995, regarding billing for disbursements and other
14 charges.

15 **H. Hourly Rates**

16 The hourly rates of all professionals and paraprofessionals rendering services in this case are
17 set forth on the Billing Summary Chart on page 2 supra.

18 **I. Professionals and Paraprofessionals**

19 Attached hereto as **Exhibit C**, is a biography of the attorneys who have worked on this
20 matter and a description of the professional education and biographies of the paralegals, professional
21 assistants, and law clerks employed by the Firm who rendered services in this case. PSZYJ&W has
22 no understanding, agreement, or arrangement of any kind to divide with or pay to anyone any of the
23 fees to be awarded in these proceedings, except to be shared among members of the Firm.

24 **J. Client Review of Billing Statements**

25 PSZYJ&W sends its billing statements to the Committee Chair each month for the purpose of
26 having the Committee monitor fees and expenses. Pursuant to the Northern District Guidelines, a
27 cover letter to the Application is being sent to the Chair of the Committee concurrently with the
28 filing of this Application. The letter invites the Committee to discuss with the Firm and/or the

1 Office of the United States Trustee any objections, concerns, or questions the Committee may have
2 with regard to the requested compensation and reimbursement set forth in the Application. A copy
3 of the transmittal letter is attached hereto as **Exhibit D**.

4 **K. Notice of Application and Hearing**

5 PSZYJ&W will notice a hearing on this Application when the matter is set for hearing by the
6 Court.

7 **IV.**

8 **THE FEES AND EXPENSES REQUESTED SHOULD BE AWARDED BASED UPON**
9 **APPLICABLE LAW**

10 The fees and expenses requested by this Application are an appropriate award for
11 PSZYJ&W's services in acting as counsel to the Committee, especially when compared to the fees
12 charged to the Debtor.

13 **A. Evaluation of Requests for Compensation**

14 Pursuant to Bankruptcy Code section 330, the Court may award to a professional person
15 reasonable compensation for actual, necessary services rendered, and reimbursement for actual,
16 necessary expenses incurred. Pursuant to Bankruptcy Code section 331, the Court may award
17 interim compensation and reimbursement to a professional. As set forth above, the fees for which
18 the Firm requests compensation and the costs incurred for which the Firm requests reimbursement
19 are for actual and necessary services rendered and costs incurred.

20 In determining the amount of allowable fees under Bankruptcy Code section 330(a), courts
21 are to be guided by the same "general principles" as are to be applied in determining awards under
22 the federal fee-shifting statutes, with "some accommodation to the peculiarities of bankruptcy
23 matters." *Burgess v. Klenske (In re Manoa Finance Co., Inc.)*, 853 F.2d 687, 691 (9th Cir. 1988).

24 In assessing the propriety of an award of attorneys' fees, twelve factors relevant to
25 determining such fees were identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714,
26 717-719 (5th Cir. 1974), a Title VII class action case under the Civil Rights Act of 1964, 42 U.S.C. §
27 2000 et seq., and *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied*, 425
28 U.S. 951 (1976): (1) the time and labor required, (2) the novelty and difficulty of the questions, (3)

1 the skill requisite to perform the service properly, (4) the preclusion of other employment by the
2 professional due to acceptance of the case, (5) the customary fee, (6) whether fee is fixed or
3 contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved
4 and the results obtained, (9) the experience, reputation, and ability of the professionals, (10) the
5 undesirability of the case, (11) the nature and length of the professional relationship with the client,
6 and (12) awards in similar cases. *See American Benefit Life Ins. Co. v. Baddock (In re First*
7 *Colonial Corp. of America)*, 544 F.2d 1291 (5th Cir. 1977) (*Johnson* criteria applicable in
8 bankruptcy cases.).

9 During the Application Period, PSZYJ&W assisted the Committee in understanding the
10 dispute with New World, focusing on the claims pool, complying with its obligations under
11 Bankruptcy Code Section 1102, and monitoring the developments in this case.

12 The time for which compensation is sought is detailed in the Firm's professional fee
13 statements contained in the exhibits hereto. PSZYJ&W's services and time expenditures are
14 reasonable in light of the labor required in this case. The Firm's charges for its professional services
15 are based upon the time, nature, extent, and value of such services and the cost of comparable
16 services in the San Francisco and Los Angeles area, other than in a case under the Bankruptcy Code.
17 The compensation the Firm seeks by way of this Application is the customary compensation sought
18 by the Firm and other professionals representing trustees, committees, and debtors in similar
19 circumstances.

20 **B. Section 330(a)(3) Factors**

21 Bankruptcy Code section 330(a)(3) sets forth five (5) factors to be considered by the Court.
22 11 U.S.C. § 330 (a)(3). Although several of these factors (such as the time involved, the timeliness
23 of PSZYJ&W's performance, and the complexity of the case) were addressed above, PSZYJ&W
24 believes two of the five factors should be discussed separately again here.

25 First, Bankruptcy Code section 330(a)(3)(C) requires that the professional services be
26 necessary to the administration of, or beneficial at the time at which the service was rendered toward
27 completion of, the case. PSZYJ&W believes the facts of this case make it evident that PSZYJ&W's
28 services were both necessary and beneficial. PSZYJ&W's efforts were essential to the organization

1 and operations of the Committee, and, as stated above, PSZYJ&W provided advice, counsel and
2 direction to the Committee to assist it with its central role of working with the Debtor and New
3 World.

4 Second, Bankruptcy Code section 330(a)(3)(E) requires the compensation to be reasonable
5 based on customary compensation charged by comparably skilled practitioners in cases other than
6 cases under the Bankruptcy Code. PSZYJ&W believes its attorneys are skilled and performed well
7 in this case, and that the fees charged by PSZYJ&W are commensurate with the fees charged by
8 PSZYJ&W's counterparts engaged in non-bankruptcy specialties of the law.

9 **C. Available Funds**

10 PSZYJ&W believes that the Debtor has sufficient funds available for the payment of fees and
11 costs incurred in connection with the Application.

12 **V.**

13 **CONCLUSION**

14 The compensation presently sought by PSZYJ&W is interim. Neither PSZYJ&W, nor any
15 shareholders or associates of the Firm, have any agreement or any understanding of any kind or
16 nature to divide, pay over, or share any portion of the fees to be awarded PSZYJ&W with any other
17 person or attorney, except among shareholders and associates of the Firm.

18 PSZYJ&W believes that the services rendered for which compensation is sought in this
19 Application have been beneficial to the estate, that the costs incurred have been necessary and
20 proper, and that the sums requested for the services rendered and the costs incurred are fair and
21 reasonable.

22 WHEREFORE, PSZYJ&W respectfully requests that this Court authorize allowance and
23 direct immediate payment of fees and costs as follows:

24 1. Allow interim compensation to the Firm in the amount of \$33,103.24 inclusive of all
25 fees and costs for the Application Period, consisting of \$31,810.00 of fees and \$3,293.24 of
26 expenses;

1 2. Authorize and direct the Debtor to pay the Firm \$33,103.24 (thereby accounting for
2 the \$2,000 reduction ordered by the Court on the First Interim Application) less amounts previously
3 paid to the Firm pursuant to the Interim Payment Order; and

4 3. Grant such other and further relief as may be appropriate under the circumstances.

5
6 Dated: January 30, 2007

PACHULSKI STANG ZIEHL YOUNG JONES
& WEINTRAUB LLP

7
8 By /s/ John D. Fiero
 John D. Fiero
 Attorney for the Official Committee of
 Unsecured Creditors