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19 UNITED STATES BANKRUPTCY COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22	In re)	Case No. 11-31376 DM
23)	Chapter 11
24	HOWREY LLP,)	Hon. Dennis Montali
25)	
26	Debtor.)	CHAPTER 11 TRUSTEE’S MOTION
)	FOR ENTRY OF ORDER APPROVING
)	UNFINISHED BUSINESS
)	SETTLEMENTS WITH HOLLAND &
)	KNIGHT LLP AND FENWICK & WEST
)	LLP

1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE:

2 Allan B. Diamond, the chapter 11 trustee ("Trustee") of the estate of Howrey LLP
3 ("Howrey" or "Debtor"), hereby submits this motion ("Motion") pursuant to Federal Rule of
4 Bankruptcy Procedure 9019(a) for entry of an order approving unfinished business settlements
5 between (i) Debtor and Holland & Knight LLP ("H&K") and (ii) Debtor and Fenwick & West
6 LLP ("Fenwick"), and represents as follows:

7 **JURISDICTION**

8 1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(a) and (b). This is a core
9 proceeding pursuant to 28 U.S.C. § 157(b) (2).

10 **BACKGROUND**

11 2. On April 11, 2011, certain creditors of Howrey filed a chapter 7 involuntary petition
12 against the Debtor. On June 6, 2011, the Court entered an order converting the above captioned
13 case to a case under chapter 11 of the Bankruptcy Code.

14 3. On September 22, 2011, the Court entered an order granting a motion to appoint a
15 chapter 11 trustee. On October 7, 2011, the U.S. Trustee for the Northern District of California
16 appointed the Trustee as chapter 11 trustee for the estate of Howrey. On October 12, 2011, the
17 Court entered an order approving the appointment of the Trustee.

18 4. In the summer of 2012, the Court approved the Trustee's request for Rule 2004
19 discovery to approximately seventy law firms, including H&K and Fenwick.

20 5. On August 1, 2012, the Trustee's counsel served H&K with a Rule 2004 subpoena for
21 information the Trustee believed to be relevant to Howrey's unfinished business claims. On
22 August 7, 2012, the Trustee served Fenwick with a substantially similar subpoena.

1 6. Both firms cooperatively produced documents and/or related settlement
2 correspondence that permitted the Trustee’s counsel to analyze the estate’s claims against H&K
3 and Fenwick for each firm’s completion of Howrey’s unfinished business.

4 7. After the Trustee’s counsel and financial advisors analyzed related data (including,
5 without limitation, amounts paid to the former Howrey partners now employed by H&K and
6 Fenwick), the Trustee made demand upon both firms. During the ensuing months, the Trustee
7 and/or his counsel and Fenwick and H&K discussed settlement either by letter, e-mail, telephone
8 or in person.

9 **TERMS OF PROPOSED H&K SETTLEMENT**

10 8. Following extensive arm’s-length negotiations, the Trustee and H&K have reached a
11 proposed resolution of the Trustee’s unfinished business claims against H&K. The proposed
12 H&K Settlement Agreement (the “H&K Settlement”), for which approval is sought by this
13 Motion, is attached hereto as **Exhibit “A.”** The material terms of the H&K Settlement are as
14 follows:

- 15 a. Within three business days of the Effective Date, H&K shall remit \$26,197.16
16 to the Trustee (the “Settlement Payment”) via check or wire transfer.
- 17 b. If H&K collects any of the approximately \$62,000 currently due and owing by
18 the client on the former Howrey matter on or before March 13, 2014, H&K will
19 pay the Trustee 11% of any amount collected (the “Contingent Payment”).
- 20 c. The Trustee will release H&K according to the terms of the H&K Settlement,
21 which release includes unfinished business claims, but will not release its
22 former Howrey partner from clawback claims related to distributions he
23 received from Howrey.

- 1 d. H&K will release the Trustee according to the terms of the H&K Settlement,
2 which includes a release of any claim H&K may have against the estate for the
3 value of legal services it provided in one of Howrey's contingent fee cases.
4 H&K has alleged the value of these legal services exceeds \$150,000.

5 **TERMS OF PROPOSED FENWICK SETTLEMENT**

6 9. Following extensive arm's-length negotiations, the Trustee and Fenwick have reached
7 a proposed resolution of the Trustee's unfinished business claims against Fenwick. The
8 proposed Fenwick Settlement Agreement (the "Fenwick Settlement"), for which approval is
9 sought by this Motion, is attached hereto as **Exhibit "B."** The material terms of the Fenwick
10 Settlement are as follows:

- 11 a. Within three business days of the Effective Date, Fenwick shall remit \$15,000
12 to the Trustee (the "Settlement Payment") via check or wire transfer.
- 13 b. The Trustee will release Fenwick according to the terms of the Fenwick
14 Settlement, which release includes unfinished business claims, but will not
15 release its former Howrey partner from clawback claims related to distributions
16 she received from Howrey.
- 17 c. Fenwick will release the Trustee according to the terms of the Fenwick
18 Settlement.

19 **BASIS FOR RELIEF**

20 10. Bankruptcy Rule 9019(a) provides that "[o]n motion by the trustee and after notice
21 and a hearing, the court may approve a compromise or settlement."

22 11. "The bankruptcy court has 'great latitude' in approving compromise agreements."
23 *Woodson v. Fireman's Insurance, Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988).

1 However, the compromise must be “fair and equitable” and “in the best interest of the estate.”
2 *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied sub*
3 *nom. Martin v. Robinson*, 479 U.S. 854 (1986).

4 12. To evaluate a compromise, a bankruptcy court considers “(a) [t]he probability of
5 success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection;
6 (c) the complexity of the litigation involved, and the expense, inconvenience and delay
7 necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference
8 to their reasonable views in the premises.” *In re A & C Properties*, 784 F.3d at 1381.

9 13. Although the Trustee, as the proponent of the settlement, bears the burden of
10 persuasion (*see id.*), “a court generally gives deference to a trustee’s business judgment in
11 deciding whether to settle a matter,” *In re Mickey Thompson, Entertainment Group, Inc.*, 292
12 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

13 14. Here, as supported by the Trustee’s accompanying declaration attached hereto as
14 **Exhibit “C,”** the factors weigh in favor of settlement.

15 15. First, both settlements are within or exceed the range of settlements previously
16 obtained in prior law firm bankruptcies, including some before this Court. Second, both
17 settlements were achieved without the cost, delay, and uncertainty of litigation. And because the
18 amount of unfinished business completed by H&K and Fenwick is relatively small, there is a
19 substantial benefit to the estate in light of costs otherwise to be incurred in obtaining these
20 modest settlements. Third, and specific to the H&K Settlement, the Trustee has obtained a
21 significant release in excess of \$150,000 of claims and scheduled debts, which increases the
22 monetary value of the H&K Settlement.

1 16. In summary, because the proposed settlements satisfy all of the *A & C Properties*
2 factors, the Trustee has concluded in his business judgment that the H&K and Fenwick
3 Settlements are fair, equitable, and in the best interest of the estate, and should be approved by
4 the Court.

5 CONCLUSION

6 For the foregoing reasons, the Trustee respectfully requests that the Court grant the
7 Motion and enter and order approving the Debtor’s compromise with SAP as described above.

8 Dated: March 22, 2013

9 */s/ Andrew B. Ryan*
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1 **NOTICE OF SERVICE**

2 X (CM/ECF) The document was electronically served on the parties to this action via the
3 mandatory United States Bankruptcy Court of California CM/ECF system upon filing of above
described document:

4 **SEE ATTACHED SERVICE LIST**

5 X (ELECTRONIC MAIL SERVICE) By electronic mail (e-mail) the above listed
6 document(s) without error to the email address(es) set forth below on this date:

7 **SEE ATTACHED SERVICE LIST**

8 X (UNITED STATES MAIL) By depositing a copy of the above-referenced documents for
9 mailing in the United States Mail, first class postage prepaid, at Houston, Texas, to the parties
listed, at their last known mailing addresses, on this date:

10 **SEE ATTACHED SERVICE LIST**

11 (OVERNIGHT COURIER) By depositing a true and correct copy of the above
12 referenced document for overnight delivery via Federal Express, at a collection facility
maintained for such purpose, addressed to the parties on the attached service list, at their last
known delivery address, on the date above written.

13 (COURIER SERVICE) By providing true and correct copies of the above referenced
14 documents [with copies of the supporting detailed invoices/attorney time records for the Final
Fee Application] via courier delivery, to the following on or about _____:

15 (FACSIMILE) That I served a true and correct copy of the above-referenced document via
16 facsimile, to the facsimile numbers indicated, to those people listed on the attached service list,
on the date above written.

17
18 /s/ Andrew B. Ryan
19 Andrew B. Ryan

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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Allan B. Diamond, in his capacity as the Chapter 11 Trustee (the "Trustee") for Howrey, Simon, Arnold and White LLP a/k/a Howrey LLP ("Howrey") and Holland & Knight LLP ("H&K", together with the Trustee, the "Parties"), as of the date signed below.

RECITALS

A. On April 11, 2011, certain creditors of Howrey filed an involuntary petition for relief under Chapter 7 of the United States Bankruptcy Code initializing Case No. 11-31376-DM (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court");

B. On June 6, 2011, the Bankruptcy Court entered an Order for Relief and Converting the Bankruptcy Case to one under Chapter 11;

C. On October 12, 2011, the Bankruptcy Court entered an Order Approving Appointment of Chapter 11 Trustee whereby the Bankruptcy Court approved the Trustee as the Chapter 11 Trustee in the Bankruptcy Case;

D. On August 1, 2012, the Trustee served H&K with a Rule 2004 subpoena for information the Trustee believed to be relevant to unfinished business claims (the "Unfinished Business Subpoena").

E. On August 22, 2012, H&K responded to the Unfinished Business Subpoena by providing information regarding certain matters being supervised and worked on by Jerrold Ganzfried, a former Howrey partner, who joined H&K after leaving Howrey.

F. Between November 15, 2012, and February 28, 2013, the Trustee and H&K engaged in arms-length negotiations regarding the settlement of unfinished business claims that Howrey may have against H&K.

G. On February 28, 2013, H&K accepted the Trustee's final settlement offer to resolve the unfinished business claims and any other claims the Trustee and/or Howrey may have. Accordingly, the Trustee and H&K hereby enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

1. The Parties have agreed to resolve any and all claims that the Trustee and/or Howrey has or may have against H&K as follows: First, H&K shall pay the Trustee the sum of \$26,197.16, in a one-time payment (the "Payment"). Second, H&K will pay the Trustee 11% of any amounts subsequently received on or before March 31, 2014 for attorneys fees, that H&K receives on the former Howrey matter on which H&K is currently owed approximately \$62,000 (the "Contingent Payment").

2. H&K has agreed to provide the Payment and the Contingent Payment according to this Agreement in exchange for the releases provided to H&K and certain related persons, including Jerrold Ganzfried. Accordingly, within three (3) business days after the Effective Date of this Agreement, as defined in Paragraph 15 below, H&K shall transfer the Payment to the Trustee either by check or wire transfer, in the manner described below. Any future transfer of the Contingent Payment shall also be made by one of the following two methods:

a. By check:

Payable to: "Allan B. Diamond, Chapter 11 Trustee of Howrey LLP"
Diamond McCarthy LLP
Attention – Jason M. Rudd
Two Houston Center
909 Fannin Street, Suite 1500
Houston, Texas 77010; or

b. By wire transfer:

Allan B. Diamond, Chapter 11 Trustee of Howrey LLP
Account No. 37401505
Citibank, N.A.
ABA No. 254070116

3. Upon execution of this Agreement, the Trustee will seek the approval of the Bankruptcy Court of this Agreement in accordance with Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). H&K agrees to reasonably cooperate, if required, in the request for approval of this Agreement from the Bankruptcy Court. This Agreement is expressly contingent upon the approval of the Bankruptcy Court.

4. Upon the Effective Date of this Agreement and receipt of the Payment, the Trustee on behalf of Howrey and the bankruptcy estate of Howrey, for consideration as enumerated above, and with the exception of the terms requiring the Contingent Payment, hereby releases, acquits, satisfies, and forever discharges H&K, and its respective successors, predecessors, assigns, representatives, insurers, guarantors, as well as its past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners, parents, affiliates, affiliated companies, joint venture partners, subcontractors, attorneys, and agents, from, of and on account of all manner of claims, action and actions, cause and causes of action, suits, debtors, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever latent or patent, in law or in equity, known or unknown, mature or unmature, that Howrey or the Trustee has ever had, now has, or shall have against H&K; provided however, that notwithstanding the foregoing, Jerrold Ganzfried shall not be released from claims reserved in Paragraph 6, below.

5. Upon the Effective Date of this Agreement and after transfer of the Payment to the Trustee, H&K, in its own name and on behalf of its agents, administrators, successors, and assigns, for consideration as enumerated above, hereby releases, acquits, satisfies, and forever

discharges Howrey and the Trustee, their successors, predecessors, assigns, representatives, insurers, guarantors, as well as their past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners, parents, affiliates, affiliated companies, joint venture partners, subcontractors, attorneys, and agents, from, of and on account of all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever latent or patent, in law or in equity, known or unknown, mature or unmature, that H&K has ever had, now has, or shall have against Howrey or the Trustee, in his capacity as Trustee. Specifically, H&K hereby relieves, acquits, satisfies, and forever discharges Howrey from any liability to H&K on its Proof of Claim and/or related to the provision of legal services on the Clark/National Guard matter.

6. ALTHOUGH JERROLD GANZFRIED IS RELEASED FROM ANY ALL CLAIMS ARISING FROM OR RELATED TO THE REPRESETNATION BY H&K OF CLIENTS THAT WERE FORMERLY CLIENTS OF HOWREY, ("GANZFRIED UNFINISHED BUSINESS CLAIMS") NOTHING CONTAINED IN THIS AGREEMENT, NOR THE NEGOTIATION, EXECUTION OR DELIVERY HEREOF BY ANY PARTY, SHALL BE DEEMED TO CONSTITUTE A WAIVER OR RELEASE OF ANY CLAIMS, RIGHTS OR ACTIONS, OTHER THAN THE GANZFRIED UNFINISHED BUSINESS CLAIMS, THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF ITS ASSIGNS, SHALL HAVE AGAINST JERROLD GANZFRIED WHETHER PURSUANT TO THE BANKRUPTCY CODE, FEDERAL, STATE STATUTORY LAW, OR COMMON LAW, OR OTHERWISE.

7. In connection with the limited releases set forth in paragraphs 4 and 5 above, the Parties waive all rights they may have under section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

By executing this Agreement, the Parties expressly and forever waive the benefits, protection and rights of California Civil Code section 1542, or any other similar provision of the law of any other jurisdiction, with respect to matters released by the Agreement.

8. The signatory for H&K hereby represents that he or she has full power and authority to settle, limit or otherwise control the matters and claims which are the subject of this Agreement and has authority to execute this Agreement on behalf of H&K.

9. The Trustee represents and warrants that he has the full power and authority to negotiate a final settlement of the matters and claims which are the subject of this Agreement, subject to Bankruptcy Court approval described herein.

10. The Parties acknowledge that the Trustee is acting solely in his capacity as the Chapter 11 Trustee of Howrey in this matter and has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

11. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies or defenses in favor of any party of interest that is not a party to this Agreement.

12. Each Party hereby submits to the jurisdiction of the Bankruptcy Court for any action, suit or proceeding to enforce this Agreement which involves Howrey or the Trustee and agree that any such action, suit or proceeding shall be brought on in the Bankruptcy Court. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit or proceeding brought in such a court related solely to the Agreement and involving Howrey or the Trustee. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement as it relates to the Bankruptcy Case.

13. Neither this Agreement, nor any of the terms hereof, nor any negotiations or proceedings in connection herewith shall constitute or be construed as or be deemed to be evidence of an admission on the part of any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party; nor shall this Agreement, or any of the terms hereof, or any negotiations or proceedings in connection herewith, or any performance or forbearance hereunder, be offered or received in evidence or used in any proceeding against any Party, or used in any proceeding, or otherwise, for any purpose whatsoever except with respect to the effectuation and enforcement of this Agreement.

14. This Agreement may be signed in counterparts, which, when taken as a whole, shall constitute one and the same document; and faxed, electronic and emailed signatures shall be deemed originals.

15. This Agreement shall be effective (the "Effective Date") fourteen (14) days after H&K receives written notice from the Trustee that the Bankruptcy Court has entered an order approving this Agreement under Bankruptcy Rule 9019.

AGREED:

Dated: March __, 2013

Howrey LLP, Debtor

By: 
Allan B. Diamond, Chapter 11 Trustee

Dated: March 12, 2013

Holland & Knight LLP

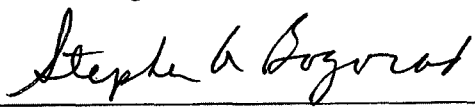
By: 
Stephen A. Bogorad, Partner

EXHIBIT B

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Allan B. Diamond, in his capacity as the Chapter 11 Trustee (the "Trustee") for Howrey, Simon, Arnold and White LLP a/k/a Howrey LLP ("Howrey") and Fenwick & West LLP ("Fenwick", together with the Trustee, the "Parties"), as of the date signed below.

RECITALS

A. On April 11, 2011, certain creditors of Howrey filed an involuntary petition for relief under Chapter 7 of the United States Bankruptcy Code initializing Case No. 11-31376-DM (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court");

B. On June 6, 2011, the Bankruptcy Court entered an Order for Relief and Converting the Bankruptcy Case to one under Chapter 11;

C. On October 12, 2011, the Bankruptcy Court entered an Order Approving Appointment of Chapter 11 Trustee whereby the Bankruptcy Court approved the Trustee as the Chapter 11 Trustee in the Bankruptcy Case;

D. On August 7, 2012, the Trustee served Fenwick with a Rule 2004 subpoena for information regarding alleged unfinished business claims (the "Unfinished Business Subpoena").

E. On September 17, 2012, Fenwick responded to the Unfinished Business Subpoena by providing information regarding unfinished business brought by Teresa Corbin, a former Howrey partner, to Fenwick.

F. Between November 15, 2012, and January 18, 2013, the Trustee and Fenwick engaged in arms-length negotiations regarding the settlement of unfinished business claims that Howrey may have against Fenwick.

G. On January 18, 2013, Fenwick accepted the Trustee's final settlement offer to resolve the unfinished business claims. Accordingly, the Trustee and Fenwick hereby enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby acknowledge and agree as follows:

1. The Parties have agreed that Fenwick shall pay the Trustee the sum of \$15,000, in a one-time payment (the "Payment"), to resolve the unfinished business claims that the Trustee and/or Howrey has or may have against Fenwick.

2. Fenwick has agreed to provide the Payment according to this Agreement in exchange for the releases provided to Fenwick in this Agreement. Accordingly, within three (3) business days after the Effective Date of this Agreement, as defined in Paragraph 15 below,

Fenwick shall transfer the Payment to the Trustee either by check or wire transfer, in the manner described below:

a. By check:

Payable to: "Allan B. Diamond, Chapter 11 Trustee of Howrey LLP"
Diamond McCarthy LLP
Attention – Jason M. Rudd
Two Houston Center
909 Fannin Street, Suite 1500
Houston, Texas 77010; or

b. By wire transfer:

Allan B. Diamond, Chapter 11 Trustee of Howrey LLP
Account No. 37401505
Citibank, N.A.
ABA No. 254070116

3. Upon execution of this Agreement, the Trustee will seek the approval of the Bankruptcy Court of this Agreement in accordance with Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Fenwick agrees to reasonably cooperate, if required, in the request for approval of this Agreement from the Bankruptcy Court. This Agreement is expressly contingent upon the approval of the Bankruptcy Court.

4. Upon the Effective Date of this Agreement and receipt of the Payment, the Trustee on behalf of Howrey, for consideration as enumerated above, and with the exception of the terms of Paragraph 6 of this Agreement, hereby releases, acquits, satisfies, and forever discharges Fenwick, and their respective successors, predecessors, assigns, representatives, insurers, guarantors, as well as their past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners (with the exception of Teresa Corbin and any other former Howrey partner who may join Fenwick after the execution of this Agreement), parents, affiliates, affiliated companies, joint venture partners, subcontractors, attorneys, and agents, of and on account of all manner of action and actions, cause and causes of action, suits, debtors, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever latent or patent, in law or in equity, known or unknown, mature or unmature, that Howrey or the Trustee has ever had, now has, or shall have against Fenwick, relating to business brought to Fenwick by Teresa Corbin.

5. Upon the Effective Date of this Agreement and after transfer of the Payment to the Trustee, Fenwick, in its own name and on behalf of its agents, administrators, successors, and assigns, for consideration as enumerated above, and with the exception of the terms of Paragraph 6 of this Agreement, hereby releases, acquits, satisfies, and forever discharges Howrey and the Trustee, their successors, predecessors, assigns, representatives, insurers, guarantors, as well as their past and present directors, officers, members, managers, employees, subsidiaries, partners and spouses of partners, parents, affiliates, affiliated companies, joint venture partners,

subcontractors, attorneys, and agents, of and on account of all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions of claims, and demands whatsoever latent or patent, in law or in equity, known or unknown, mature or unmature, that Fenwick has ever had, now has, or shall have against Howrey or the Trustee, relating to business brought to Fenwick by Teresa Corbin.

6. NOTHING CONTAINED IN THIS AGREEMENT, NOR THE NEGOTIATION, EXECUTION OR DELIVERY HEREOF BY ANY PARTY, SHALL BE DEEMED TO CONSTITUTE A WAIVER OR RELEASE OF ANY CLAIMS, RIGHTS OR ACTIONS THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF ITS ASSIGNS, SHALL HAVE AGAINST TERESA CORBIN OR ANY OTHER FORMER HOWREY PARTNER WHO IS NOW, OR MAY IN THE FUTURE BE, EMPLOYED AT OR A PARTNER OF FENWICK. EACH OF THE TRUSTEE, HOWREY, AND FENWICK HEREBY EXPRESSLY AGREE THAT HOWREY, THE TRUSTEE, THE CREDITORS COMMITTEE, OR ANY OF THEIR ASSIGNS, RESERVE AND RETAIN ALL RIGHTS AND CLAIMS THAT THEY MAY HAVE IN AND TO ALL CLAIMS, CAUSES OF ACTION AND RIGHTS, WHETHER PURSUANT TO THE BANKRUPTCY CODE, FEDERAL, STATE STATUTORY LAW OR COMMON LAW, OR OTHERWISE, AGAINST TERESA CORBIN OR ANY OTHER FORMER HOWREY PARTNER WHO IS NOW, MAY OR IN THE FUTURE BE, EMPLOYED AT OR A PARTNER OF FENWICK.

7. In connection with the limited releases set forth in paragraphs 4 and 5 above, the Parties waive all rights they may have under section 1542 of the California Civil Code, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

By executing this Agreement, the Parties expressly and forever waive the benefits, protection and rights of California Civil Code section 1542, or any other similar provision of the law of any other jurisdiction, with respect to matters released by the Agreement.

8. The signatory for Fenwick hereby represents that he or she has full power and authority to settle, limit or otherwise control the matters and claims which are the subject of this Agreement has authority to execute this Agreement on behalf of Fenwick.

9. The Trustee represents and warrants that he has the full power and authority to negotiate a final settlement of the matters and claims covered by this Agreement, subject to Bankruptcy Court approval described herein.

10. The Parties acknowledge that the Trustee is acting solely in his capacity as the Chapter 11 Trustee of Howrey in this matter and has no personal liability whatsoever with respect to this Agreement or the transactions described herein.

11. Except as otherwise specifically provided for herein, nothing contained in this Agreement shall create any rights, remedies or defenses in favor of any party of interest that is not a party to this Agreement.

12. Each Party hereby submits to the jurisdiction of the Bankruptcy Court for any action, suit or proceeding to enforce this Agreement which involves Howrey or the Trustee and agree that any such action, suit or proceeding shall be brought on in the Bankruptcy Court. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to venue of any such action, suit or proceeding brought in such a court related solely to the Agreement and involving Howrey or the Trustee. The Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement as it relates to the Bankruptcy Case.

13. Neither this Agreement, nor any of the terms hereof, nor any negotiations or proceedings in connection herewith shall constitute or be construed as or be deemed to be evidence of an admission on the part of any party of any liability or wrongdoing whatsoever, or the truth or untruth, or merit or lack of merit, of any claim or defense of any party; nor shall this Agreement, or any of the terms hereof, or any negotiations or proceedings in connection herewith, or any performance or forbearance hereunder, be offered or received in evidence or used in any proceeding against any Party, or used in any proceeding, or otherwise, for any purpose whatsoever except with respect to the effectuation and enforcement of this Agreement.

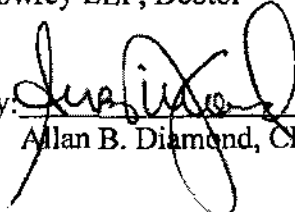
14. This Agreement may be signed in counterparts, which, when taken as a whole, shall constitute one and the same document; and faxed, electronic and emailed signatures shall be deemed originals.

15. This Agreement shall be effective (the "Effective Date") fourteen (14) days after Fenwick receives written notice from either Howrey that the Bankruptcy Court has entered an order approving this Agreement under Bankruptcy Rule 9019.

AGREED:

Dated: February __, 2013

Howrey LLP, Debtor

By: 
Allan B. Diamond, Chapter 11 Trustee

March 8,
Dated: ~~February~~ __, 2013

Fenwick & West LLP


By: 

EXHIBIT C

1 **DIAMOND MCCARTHY LLP**

Stephen T. Loden, Esq. (*pro hac vice*)

2 Andrew B. Ryan, Esq. (*pro hac vice*)

909 Fannin, 15th Floor

3 Houston, TX 77010

Telephone: 713-333-5100

4 Facsimile: 713-333-5199

Counsel for Allan B. Diamond,

5 *Chapter 11 Trustee for Howrey LLP*

6 **KORNFELD, NYBERG, BENDES & KUHNER, P.C.**

Eric A. Nyberg, Esq. (Bar No. 131105)

7 Chris D. Kuhner, Esq. (Bar No. 173291)

1970 Broadway, Suite 225

8 Oakland, CA 94612

9 Telephone: 510-763-1000

Facsimile: 510-273-8669

10 *Local Counsel for Allan B. Diamond,*

11 *Chapter 11 Trustee for Howrey LLP*

12 UNITED STATES BANKRUPTCY COURT

13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 In re

Case No. 11-31376 DM

15 HOWREY LLP,

Chapter 11

16 Debtor.

17 DECLARATION OF ALLAN B.
18 DIAMOND IN SUPPORT OF CHAPTER
19 11 TRUSTEE’S MOTION FOR ENTRY
OF ORDER APPROVING UNFINISHED
BUSINESS SETTLEMENTS WITH
HOLLAND & KNIGHT LLP AND
FENWICK & WEST LLP

20
21 Allan B. Diamond makes this declaration under 28 U.S.C. § 1746, and states:

22 1. I am the chapter 11 trustee (“Trustee”) in the above captioned bankruptcy case of
23 Howrey LLP (“Howrey” or “Debtor”). The Court approved my appointment on October 12,
24 2011. I make this declaration in support of my *Motion for Entry of Order Approving Unfinished*
25 *Business Settlements with Holland & Knight LLP and Fenwick & West LLP* (“Motion”).
26

1 2. This declaration is based either on my personal knowledge or is based on the best
2 of my knowledge derived from discussions with professionals employed by me as Trustee.

3 **The Holland & Knight Settlement.**

4 3. The Holland & Knight (“H&K”) Settlement (“H&K Settlement”) was reached
5 after extensive discovery, months of arms-length negotiations, and meetings in person and on the
6 telephone.
7

8 4. H&K hired one former Howrey partner, Jerrold Ganzfried, who brought one
9 former Howrey matter to H&K. Over a period of months, discovery revealed that H&K’s gross
10 revenue from this one former Howrey matter had generated \$238,156 in collections, with
11 approximately \$62,000 unpaid by the client. H&K’s publicly reported profit margin is 28%,
12 yielding damages of approximately \$67,000 on the collected amount, and \$17,000 on the
13 uncollected amount, before any deductions for reasonable compensation to Mr. Ganzfried.
14

15 5. Here, I have settled for \$26,197.16 on the collected amount, and 11% of the
16 uncollected amounts that are collected before March 31, 2014. This settlement equates to 11%
17 of H&K’s gross revenue and approximately 40% of its profits. It is my understanding that this
18 settlement is within the range of unfinished business settlements in prior law firm bankruptcies.
19 While it is my intention to settle the vast majority of the unfinished business claims in Howrey at
20 the uppermost level from prior law firm bankruptcies (if not higher), I discuss below
21 circumstances unique to H&K that justify this particular settlement.
22

23 6. My ultimate decision to approve the H&K Settlement is guided by the factors set
24 out in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied*
25 *sub nom. Martin v. Robinson*, 479 U.S. 854 (1986). The factors considered are “(a) [t]he
26 probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter

1 of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and
2 delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper
3 deference to their reasonable views in the premises.” *Id.* (internal citations omitted).

4 7. Here, the factors weigh in favor of the H&K Settlement.

5 8. First, this agreement results in the resolution and collection of the estate’s interest
6 in H&K’s unfinished business without the commencement of any litigation. From the beginning
7 of discussions, the Parties have cooperated to determine the value of estate’s interests in H&K’s
8 unfinished business and to reach an amicable resolution. Had litigation commenced to resolve
9 the estate’s interest in H&K’s unfinished business, I believe there is very little risk that litigation
10 would have been unsuccessful. However, given the small amount of unfinished business at issue
11 and the attendant costs of litigation, even successful litigation is unlikely to net the estate a
12 materially higher recovery from H&K’s unfinished business than provided in the H&K
13 Settlement. In my opinion, the estate is best served in concluding settlements in small matters
14 such as these in light of the costs otherwise to be incurred in litigation. Accordingly, I believe
15 the first *A & C Properties* element supports approval of the proposed settlement.
16
17

18 9. Second, the H&K Settlement satisfies the next prong of *A & C Properties* even
19 though there is no issue regarding my ability to ultimately collect on the estate’s claim to H&K’s
20 unfinished business because litigating the estate’s interests to judgment would significantly delay
21 this collection. The proposed settlement provides for an immediate payment for the estate’s
22 interests in H&K’s unfinished business, avoiding the delays of litigation and collection efforts.
23 Thus, this factor supports the proposed compromise.
24

25 10. Third, the costs and delays that accompany litigation of H&K’s unfinished
26 business could result in the estate netting a smaller recovery than provided in the proposed

1 settlement which satisfies the third element of *A&C Properties*. It is this element that justifies
2 the H&K settlement's range being lower than the percentage for which I intend to settle most
3 unfinished business claims. Specifically, H&K has alleged claims for set-off both as a scheduled
4 creditor and a law firm owed for legal services performed for Howrey after its dissolution and
5 bankruptcy.

6
7 11. During Howrey's dissolution, and after its bankruptcy, H&K and Mr. Ganzfried
8 were hired by Howrey's Dissolution Committee to pursue an appeal of one of Howrey's
9 contingency fee cases, known as "National Guard" or "*Clark*." H&K's retention by Howrey's
10 Dissolution Committee was not submitted for approval to the Bankruptcy Court.

11 12. H&K was to be paid a flat fee of \$100,000 through oral argument, and additional
12 fees at its normal hourly rates in the event work was required after the oral argument. In total,
13 H&K billed approximately \$159,000 to the *Clark* matter, for which it was never paid. Moreover,
14 H&K was scheduled by Howrey as an unsecured creditor owed approximately \$42,584. In
15 addition to the cash payments received by the estate, H&K has agreed to release its unsecured
16 claim and release the estate from any liability for fees on the *Clark* matter, which, in my business
17 judgment, substantially increases the value of the H&K Settlement to the estate. Accordingly,
18 the third *A&C Properties* factor supports approval of the proposed compromise.
19

20 13. Finally, I submit that the proposed H&K Settlement is clearly in the best interest
21 of the estate's creditors. The recovery provided in the proposed H&K Settlement to the Howrey
22 estate is – after the costs of litigation are deducted – at least as much as the estate would receive
23 from successfully litigation of the issues at hand. Further, the recovery comes without the
24 uncertainty, costs and delays of litigation.
25
26

1 14. For these reasons, I have concluded in my business judgment that the H&K
2 Settlement is fair, equitable and in the best interest of the estate.

3 **The Fenwick Settlement.**

4 15. The Fenwick & West LLP (“Fenwick”) Settlement (“Fenwick Settlement”) was
5 also reached after extensive discovery, months of arms-length negotiations, and telephone
6 conferences.
7

8 16. Fenwick hired one former Howrey partner, Teresa M. Corbin, who brought one
9 former Howrey matter to Fenwick. Over a period of months, discovery revealed that Fenwick’s
10 gross revenue from this one former Howrey matter had generated approximately \$59,000 in
11 collections. Fenwick’s publicly reported profit margin is 41%, yielding damages of
12 approximately \$24,190, before any deductions for reasonable compensation to Ms. Corbin.
13

14 17. Here, I have settled for \$15,000. This settlement equates to 25% of Fenwick’s
15 gross revenue and approximately 62% of its profits. It is my understanding that this settlement
16 exceeds the range of most unfinished business settlements in prior law firm bankruptcies.

17 18. My ultimate decision to approve the Fenwick Settlement is guided by the factors
18 set out in *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert.*
19 *denied sub nom. Martin v. Robinson*, 479 U.S. 854 (1986). The factors considered are “(a) [t]he
20 probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter
21 of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and
22 delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper
23 deference to their reasonable views in the premises.” *Id.* (internal citations omitted).
24

25 19. Here, the factors weigh in favor of the Fenwick Settlement.
26

1 20. First, this agreement results in the resolution and collection of the estate's interest
2 in Fenwick's unfinished business without the commencement of any litigation. From the
3 beginning of discussions, the Parties have cooperated to determine the value of estate's interests
4 in Fenwick's unfinished business and to reach an amicable resolution. Had litigation
5 commenced to resolve the estate's interest in Fenwick's unfinished business, I believe there is
6 very little risk that litigation would have been unsuccessful.
7

8 21. However, given the small amount of unfinished business at issue and the
9 attendant costs of litigation, even successful litigation is unlikely to net the estate a materially
10 higher recovery from Fenwick's unfinished business than provided in the Fenwick Settlement.
11 In my opinion, the estate is best served in concluding settlements in small matters such as these
12 in light of the costs otherwise to be incurred in litigation. Accordingly, I believe the first *A & C*
13 *Properties* element supports approval of the proposed settlement.
14

15 22. Second, the Fenwick Settlement satisfies the next prong of *A & C Properties* even
16 though there is no issue regarding my ability to ultimately collect on the estate's claim to
17 Fenwick's unfinished business because litigating the estate's interests to judgment would
18 significantly delay this collection. The proposed settlement provides for an immediate payment
19 for the estate's interests in Fenwick's unfinished business, avoiding the delays of litigation and
20 collection efforts. Thus, this factor supports the proposed compromise.
21

22 23. Third, the costs and delays that accompany litigation of Fenwick's unfinished
23 business could result in the estate netting a smaller recovery than provided in the proposed
24 settlement – after the costs of litigation are deducted – which satisfies the third element of *A&C*
25 *Properties*.
26

