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SECOND STREET PROPERTIES  
and BERKELEY PROPERTIES, LLC

**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

In re

SECOND STREET PROPERTIES,  
a California corporation<sup>1</sup>  
Debtor.

Case No. 14-41045-RLE  
Case No. 14-41048-RLE

Chapter 11

Cases Jointly Administered

In re

BERKELEY PROPERTIES, LLC, a  
California limited liability company,  
Debtor.

Date: December 16, 2014  
Time: 1:00 p.m.  
Courtroom: 201  
Location: 1300 Clay Street  
Oakland, CA 94612

**REPLY IN SUPPORT OF MOTION TO APPROVE FIRST INTERIM FEE**  
**APPLICATION OF SPECIAL TRANSACTIONS COUNSEL THOITS, LOVE,**  
**HERSHBERGER & McLEAN**

**I. INTRODUCTION**

Thoits, Love, Hershberger & Mclean ("Thoits Law") played an integral part in  
facilitating a complex sale that has brought substantial value to the Debtors' estates. The sale will

<sup>1</sup> Second Street Properties was formerly known as Pacific Steel Casting Company.

1 benefit the creditors of the estates and other stakeholders as well. The expertise of Thoits Law in  
2 the area of complex transactions was vital to the successful closing of the sale, as the process  
3 involved many variables, including: 1) the fact that a labor union was an interested party and that  
4 potential pension liability of approximately \$27 million would manifest if the facility had closed;  
5 2) the necessity of negotiating an arrangement whereby the Debtors would lease the real property  
6 back from the buyer; and 3) concerns from the buyer that arose during the escrow period  
7 involving the Americans with Disabilities Act and environmental compliance concerns. Thoits  
8 Law successfully guided the Debtors through the challenging sale process, and the end result was  
9 that the sale was closed, the operations of the facility were not interrupted, and the unsecured  
10 creditors are now likely to see a significant payment on their claims.

11 Thoits Law performed these vital services in an efficient manner and at reasonable rates.  
12 The billing records submitted with Thoits Law's fee application (the "Fee Application") illustrate  
13 this. Notably, the United States Trustee ("US Trustee") does not contend that Thoits Law's  
14 services were not valuable, were not performed efficiently, or that Thoits Law's billing rates  
15 were not reasonable. Rather, the US Trustee's sole basis for her instant objection to the Fee  
16 Application is based on her assertion that she was unable to "meaningfully review the fee  
17 applications [sic]" because of three purported procedural deficiencies in the Fee Application.<sup>2</sup>  
18 US Trustee Obj. p. 3. The US Trustee's position with respect to these supposed procedural  
19 deficiencies does not withstand scrutiny and therefore neither does her assertion that she was  
20 unable to meaningfully review the Fee Application.

21 Thoits Law provided a valuable service to the Debtors and the Debtors' estates. It should  
22 be compensated for these services.

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26 <sup>2</sup> The US Trustee previously objected to Thoits Law's fee application. Doc. no. 337. Thoits Law subsequently filed  
27 a supplemental declaration addressing the US Trustee's objections. Doc. no. 358. The US Trustee is now objecting  
28 to Thoits Law's fee application on entirely different grounds.

1 **II. ARGUMENT**

2 **A. The Section 330 Factors Governing the Reasonableness of Fees Support the**  
3 **Award Requested by Thoits Law**

4 11 U.S.C. § 330(a)(1)(A) provides that the court may award “reasonable compensation  
5 for actual, necessary services” provided by an attorney employed under 11 U.S.C. § 327. In  
6 determining the amount of reasonable compensation to be awarded, courts “shall consider the  
7 nature, the extent, and the value of such services, taking into account all relevant factors,  
8 including

- 9 (A) the time spent on such services;  
10 (B) the rates charged for such services;  
11 (C) whether the services were necessary to the administration of, or beneficial at  
12 the time at which the service was rendered toward the completion of, a case under  
13 this title;  
14 (D) whether the services were performed within a reasonable amount of time  
15 commensurate with the complexity, importance, and nature of the problem, issue,  
16 or task addressed;  
17 (E) with respect to a professional person, whether the person is board certified or  
18 otherwise has demonstrated skill and experience in the bankruptcy field; and  
19 (F) whether the compensation is reasonable based on the customary compensation  
20 charged by comparably skilled practitioners in cases other than cases under this  
21 title.

22 11 U.S.C. § 330(a)(3).

23 The US Trustee does not tie her analysis to any of the § 330 factors. Rather she asserts  
24 that she “cannot meaningfully review the fee applications [sic] . . . .” US Trustee Obj. p. 3. As  
25 discussed below, the US Trustee’s purported reasons why she cannot review the Fee Application  
26 are lacking in merit. And, in any case, even if the US Trustee’s objections were valid, those  
27 objections would not foreclose the US Trustee from conducting a review of the Fee Application  
28 pursuant to the statutory guidelines set forth in § 330.

29 The facts and circumstances of Thoits Law’s representation of the Debtors, as set forth in  
30 the Fee Application and its supporting declaration, illustrate that the § 330 factors support an  
31 award of the requested fees to Thoits Law.

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1                   1. *Time Spent on Services*

2           Thoits Law provided its services in an efficient manner and in a reasonable amount of  
3 time in light of the complexity of the tasks it accomplished. The sale process involved several  
4 unforeseen contingencies and included a last-minute negotiation to address some of those  
5 circumstances. Thoits Law was able to draw on its expertise in complex transactions and perform  
6 the work in this case in a time efficient manner.

7                   2. *Rates Charged for Services*

8           The attorneys handling this matter for Thoits Law billed at rates of \$490 and \$475 dollars  
9 per hour, and the paralegal billed at a rate of \$125 per hour. The experience and skill of these  
10 individuals supports their billing rates. The attorneys are all senior attorneys at Thoits Law with  
11 many years of experience in complex real estate transactions. Stephen A. Dennis, the primary  
12 attorney in this matter, has been practicing law for 30 years, and has substantial experience with  
13 complicated property and intangible asset sales such as was involved in this case. Attorneys of  
14 comparable skill and experience in the Bay Area routinely charge similar or often-times higher  
15 rates than the rates charged by Thoits Law in this case for similar matters. Declaration of  
16 Stephen A. Dennis in Support of Fee Application (“Dennis Decl.”) ¶ 13. Doc no. 320.

17                   3. *The Services were Beneficial to Completion of the Case*

18           As set forth in the Fee Application, Thoits Law was instrumental in helping the Debtors  
19 close a sale involving substantially all of their assets. The sale has brought a substantial cash  
20 infusion into the estates and will lead to the successful resolution of these jointly administered  
21 cases.

22                   4. *The Services were Performed in a Reasonable Amount of Time in Light of the*  
23 *Complexity and Importance of the Sale*

24           The time spent on this case is reasonable in light of the complicated nature of the sale,  
25 which involved various interested parties, complicated terms, many rounds of negotiation, and  
26 several areas of substantive law (including the ADA and environmental compliance concerns).

1 The sale was also very important in that it has paved the way for a successful and amicable  
2 resolution to this case.

3 *5. The Professionals at Thoits Law are Experts in Complex Sales Transactions*

4 The work performed by the attorneys for Thoits Law involved representation to facilitate  
5 a complex sales transaction and lease-back. As detailed in the Fee Application and supporting  
6 declaration, the attorneys from Thoits Law are experts in this area of the law.

7 *6. The Compensation Sought is Reasonable Based on a Comparison of Rates  
8 Charged in Similar Cases*

9 Attorneys with similar experience and skill as those from Thoits Law providing counsel  
10 in the area of complex asset sale transactions in the Bay Area charge rates similar to, or in excess  
11 of, those charged by Thoits Law in this case.

12 The factors in Title 11 U.S.C. § 330 governing the reasonableness of compensation of  
13 professionals supports the fee award requested by Thoits Law. The US Trustee does not dispute  
14 this. Instead, she contends that she “cannot meaningfully review the fee applications” because of  
15 what she perceives as procedural shortcomings. Objection p. 5. Putting aside the merits of her  
16 contention on these procedural issues, the supposed deficiencies identified would not preclude  
17 the US Trustee from engaging in at least some analysis of the § 330 factors. If she had  
18 undertaken any type of review of the statutory factors, she would have come to the conclusion  
19 that they support the award requested here.

20 **B. The Purported Deficiencies Identified by the United States Trustee do not  
21 Militate Against Approving the Fee Application**

22 The US Trustee’s objections to the Fee Application of Thoits Law either rely on an  
23 overly literal and inflexible reading of the Court’s Guidelines for Fee Awards, or consist of  
24 vague and unexplained criticisms of Thoits Law’s billing entries. None of the objections  
25 warrants a denial of the Fee Application either in whole or in part.

26 *1. The Objection Relating to the Purported \$20,000 Categorical Limit in the  
27 Guidelines is Without Merit*

28 The US Trustee objects to the fact that three of Thoits Law’s billing categories are over

1 \$20,000. Those categories are: (1) Pre-Agreement Phase (2) Negotiation; and (3) Closing. This  
2 Court's "Guidelines for Compensation and Expense Reimbursement of Professionals and  
3 Trustee" (the "Guidelines") provide practical and flexible parameters governing fee  
4 applications, and Thoits Law's fee application is within those parameters.

5 On the subject of billing categories, the Guidelines provide that the "professional may  
6 use reasonable discretion in defining projects for this purpose, provided that the application  
7 provides meaningful guidance to the Court as to the complexity and difficulty of the task."  
8 (Guidelines § 3.) The four categories Thoits Law uses for its Fee Application (pre-negotiation,  
9 negotiation, amendments, and closing) provide meaningful guidance to the Court and other  
10 reviewing parties. Breaking the work into further categories would only complicate the picture,  
11 which would be contrary to the purpose of the Guidelines.

12 Thoits Law provided counsel relating to an asset sale. It thus did not undertake a wide  
13 variety of work in the same way a debtor's counsel or a creditor's committee counsel would.  
14 For example, there could be no separate category here for discovery, case administration, or  
15 litigation. Thoits Law used its professional judgment to break the billing categories into four  
16 groups, and it believes those four categories present an organized and useful picture of the work  
17 it performed.

18 The \$20,000 figure is not meant to be a hard and fast cap as the Guidelines merely  
19 provide that "a single category should *generally* be \$20,000. This cap *may be exceeded* where  
20 further breakdown is impractical . . . ." Guidelines § 3 (emphases added). Here, further  
21 breakdown would have been impractical and would not have helped facilitate a review  
22 (whether by the Court or other parties) of the Fee Application.

## 23 2. The Employment Order

24 The US Trustee notes that the order authorizing the employment of Thoits Law does not  
25 contain a specific date as to when Thoits Law's employment would become effective. The US  
26 Trustee also notes that the Fee Application requests an effective date of April 1, 2014, doc. no.  
27 128, and she objects to any fees that were incurred before that date. The Court's order does not  
28 specify an effective date, but it is within the Court's discretion to interpret any ambiguity in its

own order and allow fees prior to April 1, 2014. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 n.4 (2009) (collecting cases stating that a bankruptcy court's interpretation of its own order is entitled to substantial deference).

Thoits Law billed 1.4 hours of time before April 1, 2014 and thus the US Trustee's objection on this point does not have significant ramifications. Nonetheless, Thoits Law should be compensated for the work it performed because that work was valuable, and the Court's order approving Thoits Law's employment does not foreclose authorization for such payment.

*3. The US Trustee's Complaints About Certain Time Entries are not Persuasive*

The US Trustee vaguely argues that certain of Thoits Law's time entries are "clumped together or contain insufficient descriptions to determine what was done." US Trustee's Obj. p. 4.

The time entries identified by the US Trustee all identify the amount of time spent on each specific task, and they also specifically describe the work done. For example, the first time entry the US Trustee contends is problematic is for May 28, 2014 in the Negotiation category. This is the work description for that date, in its entirety:

Further review and revision of asset purchase agreement (2.7); Numerous emails to co-counsel re asset purchase agreement matters (.4); Email to Mr. Kaplan re status (.1) Attention to draft schedules (.3); Reviewing and replying to email from Mr. Kaplan re Lease (.1).

Supplemental Declaration of Stephen A. Dennis, Ex. A, p. 9 (Doc. no. 358-1.)

The time spent on each task is identified, and the separate tasks are adequately described. In reading the US Trustee's objection one would expect to find a long list of tasks followed simply with a large hour figure. Such is not the case here as Thoits Law's billing entries break each task down such that a person reviewing the bill knows exactly how much time was spent on each task.

The other time entries identified by the US Trustee are similarly detailed in this regard. The US Trustee's objection on this point is without merit.

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1 **III. CONCLUSION**

2 Thoits Law provided a valuable service to the Debtors and their estates and did so in an  
3 efficient and cost-effective manner. The billing records submitted by Thoits Law are thorough  
4 and detailed, and are in line with the Guidelines for fee applications put forward by this Court.

5 WHEREFORE, Thoits Law respectfully requests that the Court enter its order as follows:

- 6 1. Granting the Motion;
- 7 2. Approving Thoits Law's fees in the amount of \$156,009.50 and authorizing the  
8 Debtors to make a payment in that amount to Thoits Law.
- 9

10 Date: December 4, 2014

THOITS, LOVE, HERSHBERGER  
& McLEAN

11  
12  
13 By: /s/ Stephen A. Dennis  
14 Stephen A. Dennis  
15 Special Transaction Counsel for  
16 Debtors and Debtors in Possession  
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