UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:	
VANTAGE TRAVEL SERVICE, INC.	Chapter 11
Debtor.	Case No. 23-11060

HENRY R. LEWIS AND THE HENRY R. LEWIS TRUST U/T/D NOVEMBER 24, 2004'S OBJECTION TO THE: (I) FIRST AND FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES OF DENTONS BINGHAM GREENEBAUM LLP AS COUNSEL TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR THE PERIOD OF AUGUST 10, 2023 THROUGH DECEMBER 20, 2023; AND (II) MOTION FOR ALLOWANCE OF DENTONS' ADMINISTRATIVE EXPENSE CLAIM

Henry R. Lewis ("Lewis") and the Henry R. Lewis Trust u/t/d November 24, 2004 (the "Trust" and, together with Lewis, the "Prepetition Lenders"), submit this Objection (the "Objection") to the: (i) *First and Final Application for Compensation and Reimbursement of Expenses of Dentons Bingham Greenbaum LLP as Counsel to the Official Committee of Unsecured Creditors for the Period of August 10, 2023 Through December 20, 2023* [Dkt. No. 609] (the "Final Fee Application"), and (ii) *Motion for Allowance of Dentons' Administrative Expense Claim* [Dkt. No. 610] (the "Motion for Allowance of Administrative Claim"). In support of this Objection, the Prepetition Lenders respectfully state as follows:

BACKGROUND

A. The Bankruptcy Proceeding and Sale of Vantage's Assets

1. On June 29, 2023 (the "Petition Date"), Vantage Travel Services, Inc. (the "Debtor"), filed in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") [Dkt. No. 1].

2. On the Petition Date, the Debtor filed the *Debtor's Motion for Authority to Sell Substantially All Assets, Including Certain Executory Contracts and Personally Identifiable Information of Customers, Pursuant to Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims, and Interests* [Dkt. No. 3] (the "Sale Motion"). The Debtor likewise filed the *Debtor's Motion for an Order (A) Approving Procedures Governing Debtor's Proposed Sale of Substantially All Assets Pursuant to Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims, and Interest; (B) Approving Form and Manner of Notice of Sale; (C) Approving Debtor's Assumption of Asset Purchase Agreement Pursuant to Section 365 of the Bankruptcy Code; and (D) Granting Related Relief* [Dkt. No. 6] (the "Bid Procedures Motion").

3. The Bid Procedures Motion proposed a timeframe for which the sale contemplated by the Sale Motion would occur. This Court subsequently issued an order approving the Bid Procedures Motion [Dkt. No. 64], establishing (among other deadlines) that an auction would be held on August 7, 2023, for the Debtor's assets. To submit a timely bid for consideration at the auction, such bid had to be delivered no later than 4:00 p.m. on August 3, 2023.

4. As anticipated, after multiple bids were received, the auction was held on August 7 and 8, 2023, and this Court approved the sale of the Debtor's assets to Pacific Travel Partners, Inc., on August 16, 2023 [Dkt. No. 291].

5. On November 22, 2023, the *Debtor's Liquidating Plan Dated October 3, 2023,* was confirmed [Dkt. No. 577], following multiple hearings and over the objection of the Committee [Dkt. No. 530] (the "Plan Objection"), the Plan Objection having been filed notwithstanding overwhelming support for confirmation by the Committee's constituents.

B. Dentons Bingham Greenebaum LLP's Representation of the Committee.

6. On July 25, 2023, Dentons Bingham Greenebaum LLP ("Dentons") purportedly was retained as counsel to Robert Hert and Kenneth Schwartz. On August 1, 2023, Dentons

entered an appearance on behalf of Mr. Hert and Mr. Schwartz, as an attempted *ad hoc* committee [Dkt. No. 170] (the "Purported Ad Hoc Committee").

7. That effort quickly fizzled out. This Court, in an order dated August 3, 2023, found that those two individuals did not have the authority to act on behalf of any other individuals and denied the formation of an unofficial committee [Dkt. No. 191] (the "Order Denying Ad Hoc Committee").[1]

8. While attempting, but failing, to constitute an *ad hoc* committee, Mr. Hert and Mr. Schwartz, by and through Dentons, filed two motions on August 3, 2023. First, they filed the *Ad Hoc Committee of Customers of Vantage Travel Service Inc.'s Preliminary Omnibus Objection and Reservation of Rights With Respect to Certain Pending Motions* [Dkt. No. 173]. Second, they filed the *Ad Hoc Committee of Customers of Vantage Travel Service, Inc.'s Objection and Reservation of Rights With Respect to the United States Trustee's Motion to Appoint a Chapter 11 Trustee or, Alternatively, to Convert the Debtor's Chapter 11 Case to Chapter 7* [Dkt. No. 175]. Through these two motions, Mr. Hert and Mr. Schwartz sought to delay the entry of orders on certain first day motions and on the appointment of a trustee until an official committee of unsecured creditors could be formed.

9. Also on August 3, 2023, Mr. Hert and Mr. Schwartz filed the *Objection of Robert Hert and Kenneth Schwartz to the Debtor's Motion for Authority to Sell Substantially All Assets, Including Certain Executory Contracts and Personally Identifiable Information of Customers, Pursuant to Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims, and Interests* [Dkt. No. 195]. The next day, Mr. Hert and Mr. Schwartz filed the *Motion of Robert Hert*

[1] Prior to issuing the Order Denying Ad Hoc Committee, this Court noted that the notice of appearance filed by Dentons lack the verified statement required under Bankruptcy Rule 2019(b).

and Kenneth Schwartz to Continue the Scheduled Auction and Hearing on the Debtor's Motion for Authority to Sell Substantially All Assets, Including Certain Executory Contracts and Personally Identifiable Information of Customers, Pursuant to Sections 363 and 365 of the Bankruptcy Code, Free and Clear of Liens, Claims, and Interests [Dkt. No. 203].

10. None of the filings by the Purported Ad Hoc Committee lead to any tangible benefit to the estate, to unsecured creditors generally, or to customer creditors in particular. Rather, such efforts only increased the costs of administration of the case, including by increasing the fees of the Debtor's professionals and others. Nor did the Purported Ad Hoc Committee's efforts lead to any new buyer for the Debtor's assets; all such marketing efforts had already been performed by the Debtor, notwithstanding the Purported Ad Hoc Committee's attempt to disrupt the sale effort to its proposed members' own detriment.

11. On August 8, 2023—***the same day the auction on the Debtor's assets concluded***—the United States Trustee (the "UST") appointed the final form of Official Committee of Unsecured Creditors (the "Committee").[2]

12. The Committee then retained Dentons as its counsel. The Committee filed its *Application of the Official Committee of Unsecured Creditors for an Order Authorizing the Employment of Denton as Counsel to the Official Committee of Unsecured Creditors Effective as of August 10, 2023* [Dkt. No. 313] (the "Retention Application") on August 24, 2023—after the sale of the Debtor's assets had closed. This Court entered an order granting the Retention Application and giving it retroactive effect to August 10, 2023 [Dkt. No. 395].

[2] The Committee was initially appointed on August 4, 2023 [Dkt. No. 201], but its composition changed due to the withdrawal of certain members, and the Committee's membership was apparently not finalized until August 8, 2023 [Dkt. No. 221].

C. Compensation Requests and Procedures

13. Before this Court granted the Retention Application, on August 16, 2023, this Court entered its *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 290], which established the procedures by which professionals retained in this case could seek postpetition interim compensation (the "Interim Compensation Procedures").

14. This Court also approved the Debtor's revised updated budget [Dkt. No. 374] (the "Budget"), which Budget provided that up to $100,000 of the Prepetition Lenders' cash collateral could be used to pay allowed fees of bankruptcy counsel for the Committee.

15. Pursuant to the Interim Compensation Procedures, a party may object to any monthly fee statement by serving a written objection upon the professional seeking compensation and the Notice Parties, as defined in the Interim Compensation Procedures (the "Notice of Objection to Monthly Fee Statement").

16. On October 31, 2023, Dentons served a fee statement to the Notice Parties (the "Monthly Fee Statement"), seeking approval of fees in the amount of $162,825.00 and reimbursement in the amount of $1,678.56 for the period from August 1, 2023, through October 31, 2023.

17. Pursuant to the Interim Compensation Procedures, on November 20, 2023, the Prepetition Lenders provided to Dentons and the Notice Parties a *Notice of Objection to Monthly Fee Statement*, arguing that the fees requested were neither reasonable nor necessary (the "Objection to Monthly Statement"). The Prepetition Lenders, moreover, objected to any payment in excess of $40,761.00. In summary, the Objection to Monthly Statement argued that: (1) the requested reimbursement amount of $162,825.00 far exceeded the allotted amount of $100,000 approved by this Court in the Budget; (2) Dentons's work related to cash collateral, a document

request, creditor claims, the sale motion, and its motion for appointment of a trustee was excessive and unreasonable; (3) Dentons's improperly billed the estate at full cost for non-working travel; and (4) Dentons incurred unreasonable expenses related to hearings.

18. As part of the Objection to Monthly Statement, the Prepetition Lenders expressly reserved all rights regarding the Monthly Fee Statement "and any and all other compensation requests by Dentons." Objection to Monthly Fee Statement, ¶ 21. They further stated that the objections were non-exhaustive and that the Prepetition Lenders reserved the right "to assert these and other objections not set forth herein if Dentons seeks approval of the Fee Statement with the Court." Objection to Monthly Fee Statement, ¶ 21.

19. Ultimately, with the consent of the Prepetition Lenders (but subject to a full reservation of rights), Dentons was paid $73,001 on an interim basis following the Objection to Monthly Fee Statement.

20. On December 20, 2023, Dentons filed its Final Fee Application, seeking total compensation in the amount of $264,938.00.

21. Contemporaneously with the Final Fee Application, Dentons filed the Motion for Allowance of Administrative Claim, seeking allowance of $16,442.00 for Dentons's representation of Mr. Hert and Mr. Schwartz through their failed *ad hoc* committee.

I. OBJECTIONS TO DENTONS'S FINAL FEE APPLICATION

22. Under § 330(a) of the Bankruptcy Code, the court may award to professionals employed under §§ 327 or 1103 "reasonable compensation for actual, necessary services rendered by the . . . professional person, or attorney and by any paraprofessional person employed by any such person." 11 U.S.C. § 330(a)(1)(A). Under § 330(b)(3), in determining the amount of reasonable compensation to be awarded, "the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including--

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

11 U.S.C. § 330(b)(3). Further, "[t]he Court has a duty to prevent abuses, and as such has discretion to reduce fees that are excessive or duplicative even where a spreadsheet is provided detailing the hours spent on a particular matter." In re Manley Toys Ltd., No. 16-15374 (JNP), 2018 WL 3213710, at *9 (Bankr. D.N.J. June 21, 2018), aff'd, No. CV 18-11465 (RMB), 2019 WL 3229301 (D.N.J. July 18, 2019).

23. A fee applicant bears the burden of proof as to each of the elements of a fee application, including proving that the services provided were necessary and reasonable and that the billed expenses were necessary, reasonable, and actually incurred. See e.g., Howard v. High River Ltd. P'ship, 369 B.R. 111, 115 (S.D.N.Y. 2007); In re Keene Corp., 205 B.R. 690, 695 (Bankr. S.D.N.Y. 1997); In re 530 West 28th St., Ltd. P'ship, No. 08-13266, 2009 WL 4893287, at *8 (Bankr. S.D.N.Y. Dec. 11, 2009). The failure of an applicant to sustain the burden of proof as to the reasonableness of the compensation may result in the denial of the request for compensation. See, e.g., In re Beverly Mfg. Corp., 841 F.2d 365 (11th Cir. 1988).

24. In determining if services are "necessary," courts employ an objective test, which asks "what a reasonable lawyer would have done at the time." In re Cenargo Int'l PLC, 294 B.R. 571, 595 (Bankr. S.D.N.Y. 2003). Stated differently, "the test is an objective one and considers 'what services a reasonable lawyer or legal firm would have performed in the same circumstances.'" In re Keene, 205 B.R. at 696 (quoting In re Ames Dep't Stores, Inc., 76 F.3d 66, 72 (2d Cir. 1996)).

25. When evaluating the "benefit" of the services to the estate, courts employ a forward-looking, objective test. Under this objective test, § 330(a)'s "benefit" and "necessary" criteria "are satisfied if a reasonable attorney would have believed at the time that a particular service would benefit the estate, taking into consideration the chances of success and the reasonably-projected attendant costs." In re Cenargo, 294 B.R. at 596; see also In re Angelika Films 57th, Inc., 227 B.R. 29, 42 (Bankr. S.D.N.Y. 1998) (stating that "[a]n attorney should only proceed with a legal service if the potential benefit of the service, which takes into consideration the chances of success, outweighs the costs"). The professional is required to undertake an appropriate cost-benefit analysis before rendering the service. Keene, 205 B.R. at 696.

A. Because Most of Dentons's Work Was Unlikely to Benefit the Estate or Its Creditors—and, In Fact, Did Not Benefit the Estate or Its Creditors—Nearly All of the Requested Fees in the Final Fee Application Should be Disallowed.

26. Through its Final Fee Application, Dentons seeks compensation for work that was exceedingly unlikely to benefit the estate—and, at many times, ***knowingly*** would ***harm*** the estate and the Committee's constituents. Any cost-benefit analysis would have established that these efforts would be fruitless. Indeed, on numerous occasions, this Court warned Dentons that the actions it was taking were unlikely to be approved and would not result in meaningful progression

in this proceeding.[3] These warnings were not heeded. Consistent with these prior admonitions, the Prepetition Lenders submit that a substantial portion of Dentons's work, since its retention (and before), was indeed fruitless and was never reasonably likely to result in any meaningful benefit to the estate, generally, or its constituency of unsecured creditors, specifically.

27. This reality also is reflected in the timeline of the Committee's formation compared to the critical developments in this case. The Committee's formation was not finalized until August 8, 2023. An auction that ultimately resulted in the sale of substantially all of the Debtor's assets was held on August 7 and 8, 2023. Thus, by the time the Committee was formed and Dentons was retained by the Committee to serve as counsel on August 10, 2023, the marketing was completed, the auction was done, and the Debtor had finalized substantially all of the legwork required for a successful sale. Critically, the terms of the sale also were final, having been established by a final round of binding sealed bids. It is for the period after August 10, 2023, after the auction had been conducted, that Dentons now seeks payment of substantial fees. The Committee (and Dentons), however, provided no benefit in the sale process, and the favorable outcome for the Committee's constituents was the result of efforts by the Debtor, its advisors, and the Prepetition Lenders.

28. Conversely, if anything, Dentons interjected a destructive effect on the process, such as through its last-minute motion seeking to continue the auction on behalf of the Purported Ad Hoc Committee [Dkt. No. 203], and its meritless objections to the sale [Dkt. No. 262], each of

[3] For example, at a hearing on September 29, 2023, this Court stated the following with respect to the Committee's desire to appoint a Chapter 11 trustee: "Although candidly, I see no basis for a Chapter - - I see no difference between a Chapter 11 trustee and the liquidating plan because there's no point going through the plan exercise if you're going to simply put another party in place." Hr'g Tr. 9:8-9:11, Sept. 29, 2023. The Court also referenced the importance of cost-benefit analysis in discussing the potential appointment to a Chapter 11 trustee, noting that a Chapter 11 trustee would have "nothing to operate," Hr'g Tr. 26:21, Sept. 29, 2023, and that the Court needed to consider the "cost of litigating," Hr'g Tr. 27:7, Sept. 29, 2023.

which sought to prevent the benefits of the sale from coming to fruition, rather than furthering such benefits.

29. Likewise, after the sale concluded, prudent Committee counsel—acting for the benefit of its constituents as a whole and appreciating the economics of the case (including the up to $100,000 allocated in the Budget)—would have focused its attention on an efficient, cooperative, and cost-effective winddown through a consensual liquidating plan to maximize the amount of distributions to general unsecured creditors. But not here. Rather, while continuing to pursue side fights around a trustee or conversion through its meritless, emergency motion [Dkt. No. 410], Committee counsel became the primary ***impediment*** to a consensual plan, even with the Debtor and the Prepetition Lenders working cooperatively in that direction.

30. And even after the Committee's constituents voted overwhelmingly in favor of confirmation, [Dkt. No. 537], the Committee continued to holdout primarily on the basis that the proposed creditor trustee would not hire Dentons as counsel[4]—not based on the economic interests or legal rights of general unsecured creditors. See Plan Objection, ¶¶ 2-3. Thus, while holding up confirmation of a plan its constituents overwhelming favored through multiple hearings, Dentons seemingly pursued its own interests in accessing future, post-confirmation fees, all the while causing the fees of the Debtor's counsel and other professionals to increase in responding to the Committee.[5] Indeed, the Prepetition Lenders, upon their review of the Final Fee Application,

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[4] This Court noted on the record that the Committee's obstinance at confirmation appeared to be in protest of the creditor trustee not hiring Dentons as his counsel. See Hr'g Tr. 20:19-20:22, Nov. 13, 2023 ("[W]hile the Committee claims this is not an attempt to hire it's [sic] lawyer, it's hard to see it any other way.").

[5] Another critical, last issue regarding the Plan was whether certain customer deposit claims were entitled to priority treatment or should be classified as general unsecured claims. If classified as priority claims, such treatment would reduce the recovery to general unsecured creditors, who would be paid after priority claims. Yet despite this material issue jeopardizing the Committee's constituents' recovery, Dentons, when pressed for a position, was unable to offer one. And this Court took notice, stating: "It was surprising that the Committee took no position on the deposit." See Hr'g Tr., 29:23-29:24, Nov. 13, 2023.

calculate that Dentons seeks payment for 50.2 hours related to plan confirmation and the drafting of its objection, totaling approximately $25,241.00 in fees.

31. Accordingly, Dentons's actions—when considered both individually and as a whole since its retention—were never likely to benefit the estate, and, in fact, often were counter to the clear interests of the estate and the Committee's constituents. And although Dentons was told these facts many times, it persisted to the detriment of everyone else involved. Dentons, therefore, cannot meet the standard for entitlement to compensation. This Court, therefore, should disallow all compensation to Dentons in excess of the $73,001 it was already paid under the Interim Compensation Procedures.

B. In Addition to Not Benefiting the Estate, Denton's Billing Records Reflect Numerous Instances of Excessive and Wasteful Time Spent on Matters that Should Not Be Compensable, Among Other Issues.

32. When applying for fees, attorneys "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary." Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). Accordingly, "attorneys will not be fully compensated for spending an unreasonable number of hours on activities of little benefit to the estate." In re Pettibone Corp., 74 B.R. 293, 306 (Bankr. N.D. Ill. 1987). Nonetheless, Dentons seeks fees for excessive periods of time spent working on matters that provided little or no benefit to the estate. Thus, in addition to reducing Dentons' fee request because its services were not beneficial to the estate, this Court should incrementally reduce the allowed fees based on this and additional other billing issues set forth below.

i. Excessive Time Meeting with Committee Members

33. Through the Prepetition Lenders' review of the Final Fee Application, the Prepetition Lender believes that Dentons spent at least 63.8 hours meeting with the Committee members or communicating with the Debtor, and now seeks payment in the amount of $32,624

for such communications. The number of such meetings, particularly given the late stage of these proceedings when Dentons was retained as counsel to the Committee, were wholly excessive and could not possibly have resulted in sufficient benefits to the Debtor's estate. As a result, the Prepetition Lenders object to fees related to meetings with the Committee, totaling $32,624.00.

ii. The Frivolous Trustee Motion

34. Dentons spent an inordinate amount of time attempting to convert the case to chapter 7 or appointing a chapter 11 trustee, filing *The Official Committee of Unsecured Creditors' Motion for Appointment of a Chapter 11 Trustee or, Alternatively, Conversion to a Case Under Chapter 7* [Dkt. No. 410] (the "Trustee Motion").

35. Dentons filed the Trustee Motion shortly after the failure of a similar motion filed by the U.S. Trustee, which should have alerted Committee counsel that the motion was not reasonably likely to succeed and plainly did not provide any tangible benefit to the estate. As this Court noted on numerous occasions, the appointment of a chapter 11 trustee at the time the Trustee Motion was filed made no sense: the estate could not afford a chapter 11 trustee, a chapter 11 trustee had no business to operate, and appointment of a trustee would not have advanced the case.[6] Finally, given the Court's admonition and the other parties' stated intention to convert the case if plan confirmation were not achieved (a position the parties had earlier articulated), the Committee eventually withdrew the Trustee Motion, which reflects both the motion's lack of merit and Dentons's misguided effort to undermine a sale and plan process that ultimately would provide significant financial benefit through the travel credits to customer creditors. Thus, the Prepetition

[6] For example, at a hearing on September 29, 2023, this Court warned "There's not an option for a Chapter 11 Trustee." Hr'g Tr. 5:8-5:9, Sept. 29, 2023. This Court also stated that it saw "no benefit to appointing a chapter 11 trustee." Hr'g Tr. 23:21-23:22, Sept. 29, 2023. And, while this Court recognized that while "the Committee may seek to argue a Chapter 11 trustee . . . , it makes no sense." Hr'g Tr. 26:14-26:16, Sept. 29, 2023. Finally, this Court noted that it was "reluctant to put a Chapter 11 Trustee into the middle of something like - - [it doesn't] put them in operations where there is *no money* and they can't operate." Hr'g Tr. 26:17-26:20, Sept. 29, 2023

Lenders object to all fees of Dentons sought in relation to the Trustee Motion, which, through the Prepetition Lenders' review, totals approximately $26,129.

iii. Block Billing

36. The Final Fee Application includes several entries of time that have been block-billed. A professional seeking reimbursement bears the burden of submitting time entries that provide the requisite specificity for a court to determine an entry's "reasonableness and necessity." In re Trevino, 648 B.R. 847, 875 (Bankr. S.D. Tex. 2023). Accordingly, "[a] professional is required to bill each task separately," thereby avoiding block-billing practices. In re Baker, 374 B.R. 489, 495 (Bankr. E.D.N.Y. 2007). "Where the amount of block-billed entries are [sic] egregious, a court may reduce the fee award by a greater percentage than if block-billed entries are scarce." In re Trevino, 648 B.R. at 875. Here, the Final Fee Application is rife with examples of vague time entries that typify poor block-billing practices. To point to just one example, on August 10, a 1.5-hour entry reads: "Review and analysis of sale motion and DIP motion and communicate with committee members regarding same/recommended filings." Final Fee Application, 54. From this entry, it is impossible to know how much time the time the billing attorney spent reviewing and analyzing each of the documents referenced in the entry, and how much time was spent communicating the findings of the review to Committee members. Throughout the Final Fee Application, Dentons has not provided the requisite specificity so that the Prepetition Lenders, or indeed this Court, can determine with certainty that the work referenced therein was reasonable or necessary. The Prepetition Lenders have calculated that roughly $100,775 of the requested fees—roughly forty percent of the total fees requested—are either block-billed or excessively vague. Accordingly, the Prepetition Lenders request that any block-billing or vague entries be disallowed or heavily discounted.

iv. Charging of Rates Not Anticipated by the Retention Application

37. In the Retention Application, Dentons anticipated that three partners, one associate, and one managing associate would render services to the committee. See Retention Application, ¶ 19. The highest rate for any of these individuals was $875 per hour. Nonetheless, the Final Fee Application seeks reimbursement for work completed by an attorney billing at $1,360 per hour. Dentons has not attempted to show why this significant increase was reasonable or necessary (and nor could it). See In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 856 n.35 (3d Cir. 1994) ("[T]he reasonable hourly rate has a cap based on the expected and actual complexity of the case, a cap which, while flexible, should stave off clear abuses."). This is compounded by the fact that Dentons only became involved after the auction had been completed, the sale process was nearly done, and few matters stood between the Debtor and a consensual, liquidating plan. In total, 2.3 hours were completed over the contemplated maximum rate of $875. Accordingly, the Prepetition Lenders object to allowance of any fees billed at a rate in excess of $875, for a total reduction of $1,115.50.

v. The Final Fee Application Seeks Payment Far in Excess of the Budget

38. Dentons seeks payment of fees that far exceed the Budget for Committee counsel in this case. Specifically, as reflected in the Final Fee Application, Dentons seeks payment of $264,938 in fees and $1,862.31 in expenses. The Budget, to which Committee counsel did not object, anticipated that up to $100,000 of the Prepetition Lenders' cash collateral could be used to pay allowed fees of bankruptcy counsel for the Committee. Where, as here, much of Dentons's work did not provide any material benefit to the estate, and Dentons has made no effort to stay within budget or explain why its compensation has so grossly exceeded the amount approved in the Budget, this Court should reduce the fees requested accordingly.

vi. Billing at Full Cost for Non-working Travel

39. The Final Fee Application appears to include 34.8 hours of non-working travel time, resulting in over $20,532 in requested fees. Final Fee Application, ¶¶ 55-66. Although Dentons requested in its Retention Application to "bill travel time at the normal billing rate for the individual involved," Retention Application, ¶ 25, "[a] reasonable treatment of non-working travel time, taking into consideration both the necessity of travel where counsel is out of town and the parties' choice of counsel, is to allow billing for half the travel time," In re Windmill Run Assocs., Ltd., 566 B.R. 396, 455 (Bankr. S.D. Tex. 2017) (discounting requested travel time fees by one half where counsel was located in Dallas and the court was located in Houston). Accordingly, the Prepetition Lenders object to the Final Fee Application in the amount of $10,266 based on non-working travel time that should have been billed at 50% rates to the estate.

vii. Reimbursement for Excessive and Unnecessary Expenses

40. Dentons must demonstrate that billed expenses were necessary and reasonable. See, e.g., In re Channel Master Holdings, Inc., 309 B.R. 855, 861 (Bankr. D. Del. 2004). Here, the Final Fee Application includes two requests for reimbursement of expenses for lodging in hotels in Boston, totaling $690.56. Each of the requests for lodging appear to be related to hearings in these proceedings held in Boston, following counsel's travel from Portland, Maine. Per the Final Fee Application itself, such travel takes roughly two hours to complete. Thus, lodging, regardless of what time of day the hearings were held, was an unnecessary and unreasonable expense for Dentons to seek to pass on to the estate. Accordingly, the Prepetition Lenders object to reimbursement of $690.56 in lodging as unnecessary and unreasonable.

II. OBJECTION TO THE MOTION FOR ALLOWANCE OF ADMINISTRATIVE CLAIM

41. Section 503 of the Bankruptcy Code provides that there shall be allowed claims for administration expenses for "a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title." 11 U.S.C. § 503(b)(3)(D).

42. Although "[t]he policy aim behind . . . § 503(b) is to promote meaningful creditor participation in the reorganization process," there is a "contrasting policy that administrative expenses should be kept to a minimum." In re Sentinel Mgmt. Grp., Inc., 404 B.R. 488, 493 (Bankr. N.D. Ill. 2009). Because of the overriding preference to keep administrative expenses to a minimum, courts construe § 503(b) "narrowly," and the burden is on the plaintiff to prove that it made a substantial contribution. Id. Recovery for ad hoc committees is limited to "extraordinary creditor actions which lead directly to significant and tangible benefits to the creditors, debtor, or the estate." In re D.W.G.K. Rests., Inc., 84 B.R. 684, 690 (Bankr. S.D. Cal. 1988).

43. Here, the Purported Ad Hoc Committee, represented by Dentons, has not met this burden—nor come anywhere close to it. Dentons has not shown how, in light of the narrow construction of § 503(b), its advocacy produced a "significant and tangible benefit to the creditors, or the estate." Id.; see also In re Sentinel Mgmt. Grp., Inc., 404 B.R. at 494-95 ("The Ad Hoc Committee has failed to demonstrate how their efforts have resulted in something more than an indirect, incidental, or tangential benefit to the Estate."). Far from it, the Motion for Allowance of Administrative Claim can muster only one attempt at showing such a benefit: "Without Mr. Hert and Mr. Schwartz having filed the Objections to protect the interests of general unsecured creditors, such interests would not have been the subject of advocacy prior to formation of the

Committee—and there would not have been any pending objections for the Committee to adopt." Motion for Allowance of Administrative Claim, 6. In short, this sole act, taking course over the roughly two-week period that Dentons represented the Purported Ad Hoc Committee is simply not an "extraordinary act." See id. Nor did it, in fact, actually provide any benefit. It is telling that Dentons can argue only that an objection was filed—and not that the objection actually produced any beneficial result (or was even likely to do so). And the mere fact that the Committee later adopted the same unproductive objection proves nothing regarding a substantial contribution claim; it simply further highlights why Dentons' fees for the Committee were so excessive and unreasonable.

44. Even if the mere filing of an objection were an extraordinary act, Dentons must also meet its burden of proving that the Purported Ad Hoc Committee was not the "primary beneficiary of its advocacy." Id.; see also Lebron v. Mechem Fin. Inc., 27 F.3d 937, 944 (3d Cir. 1994) ("Inherent in the term 'substantial' is the concept that the benefit received by the estate must be more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests. Creditors are presumed to be acting in their own interests until they satisfy the court that their efforts have transcended self-protection."). Here, this Court specifically held in the Order Denying Ad Hoc Committee that Mr. Hert and Mr. Schwartz could speak for themselves, but that there was "no basis for them to be considered an Ad Hoc Committee." Order Denying Ad Hoc Committee, 1. In the Motion for Allowance of Administrative Claim, Dentons makes no attempt to rebut the prior conclusion that Mr. Hert and Mr. Schwartz were acting on their own behalf and for their own benefit.

45. The Motion for Allowance of Administrative Claim comes nowhere close to the high burden for establishing a substantial contribution claim, and, therefore, it must be denied in its entirety.

* * *

46. The Prepetition Lenders request that this Court disallow any and all compensation or expense reimbursement requested in the Final Fee Applications in excess of $73,001. Further, because Dentons has not met its burden that it made a substantial contribution on behalf of the Purported Ad Hoc Committee, the Prepetition Lenders request this Court deny the Motion for Allowance of Administrative Claim in its entirety. Finally, the Prepetition Lenders request an opportunity for discovery and an evidentiary hearing to the extent Dentons opposes any of the factual issues raised by this Objection.

THE PREPETITION LENDERS' RESPONSES TO ALLEGATIONS IN THE FINAL FEE APPLICATION

47. In accordance with Local Rule 9013-1(i), the Prepetition Lenders further respond to the allegations in the Final Fee Application as follows.

INTRODUCTION[7]

48. The Prepetition Lenders deny the allegations in Paragraphs 1-3 of the Final Fee Application.

[7] To the extent any introductory language, headings, headers, or footnotes in the Final Fee Application constitutes an allegation requiring a response, all such allegations are denied.

JURISDICTION, VENUE, AND PREDICATES FOR RELIEF

49. The Prepetition Lenders admit the allegations contained in Paragraph 4 of the Final Fee Application, but deny that Dentons is entitled to the relief sought under the cited statutory provisions and rules.

BACKGROUND AND PROCEDURAL HISTORY

50. The Prepetition Lenders admit the allegations contained in Paragraphs 5 and 6 of the Final Fee Application.

51. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 7 of the Final Fee Application, and therefore deny the same, except that the Prepetition Lenders admit that allegation Exhibit A purports to be an Engagement Letter between Dentons and the Committee.

52. The allegations contained in Paragraph 8 and 9 of the Final Fee Application refer to legal documents that speak for themselves. To the extent any response by the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraphs 8 and 9 of the Final Fee Application.

53. The allegations contained in Paragraph 10 of the Final Fee Application refer to legal documents that speak for themselves. The Prepetition Lenders deny the remaining allegations contained in Paragraphs 10 of the Final Fee Application, and expressly deny the implication that the Prepetition Lenders lacked standing to object to the Monthly Fee Statement.

54. The Prepetition Lenders admit the allegation contained in Paragraph 11 of the Final Fee Application that Dentons requested the referenced compensation. The Prepetition Lenders deny the remaining allegations in Paragraph 11 of the Final Fee Application to the extent they imply that the Prepetition Lenders could not object to the Monthly Fee Statement.

55. The Prepetition Lenders admit that Exhibit C is a copy of the Objection to Monthly Statement, but deny that there was any defect or computational error in the Objection to Monthly Fee Statement. To the extent further response is required as to the allegations contained in Paragraph 12 of the Final Fee Statement, the Prepetition Lenders reiterate their objections made in the Objection to Monthly Fee Statement.

56. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 13 of the Final Fee Application, and therefore deny the same.

57. The Prepetition Lenders admit the allegations contained in Paragraph 14 of the Final Fee Statement, except to deny that Dentons is entitled to the compensation requested in the Final Fee Statement.

58. The Prepetition Lenders deny the allegations contained in Paragraph 15 of the Final Fee Statement.

COMPENSATION AND REIMBURSEMENT REQUEST

59. The Prepetition Lenders deny the allegations contained in Paragraphs 16-75 of the Final Fee Statement, including, without limitation, denying that Dentons is entitled to the compensation and reimbursement sought. The Prepetition Lenders incorporate by reference the Objection as further basis for such denial.

NOTICE

60. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 76 of the Final Fee Application, and therefore deny the same.

CONCLUSION

61. The text following the heading entitled "Conclusion" contains legal conclusions to which no response is required. To the extent a response is required, the Prepetition Lenders deny the allegations contained under the text entitled "Conclusion," specifically, without limitation that Dentons is entitled to the relief requested therein.

THE PREPETITION LENDERS' RESPONSE TO ALLEGTATIONS IN THE MOTION FOR ALLOWANCE OF ADMINISTRATIVE CLAIM

62. In accordance with Local Rule 9013-1(i), the Prepetition Lenders further respond to the allegations in the Motion for Allowance of Administrative Claim as follows.

JURISDICTION, VENUE, AND STATUROY BASIS FOR RELIEF[8]

63. The Prepetition Lenders admit the allegations contained in Paragraph 1 in the Motion for Allowance of Administrative Claim, but deny that Dentons is entitled to the relief sought under the cited provisions.

BACKGROUND

I. The Debtor Commenced the Chapter 11 Case and the UST Formed the Committee

64. The Prepetition Lenders admit the allegations contained in Paragraphs 2-4 of the Motion for Allowance of Administrative Claim.

65. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 5 and 6 of the Motion for Allowance of Administrative Claim, and therefore deny the same.

[8] To the extent any introductory language, headings, headers, or footnotes in the Application constitutes an allegation requiring a response, all such allegations are denied.

66. The allegations contained in Paragraphs 7-9 of the Motion for Allowance of Administrative Claim refer to legal documents that speak for themselves. To the extent any response by the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraphs 7-9 of the Motion for Allowance of Administrative Claim.

67. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 10 and 11 of the Motion for Allowance of Administrative Claim, and therefore deny the same. The Prepetition Lenders further deny that any participation of Dentons in the 341 meeting was for the benefit of general unsecured creditors.

68. The allegations contained in Paragraphs 12 and 13 of the Motion for Allowance of Administrative Claim refer to legal documents that speak for themselves. To the extent any response by the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraphs 12 and 13 of the Motion for Allowance of Administrative Claim. The Prepetition Lenders expressly deny, without limitation, the allegation that Dentons filed the Sale Objection in order to protect the interests of Mr. Hert, Mr. Schwartz, and all similarly situated customers of the Debtor.

69. The Prepetition Lenders are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in Paragraph 14 of the Motion for Allowance of Administrative Claim, and therefore deny the same.

70. The allegations contained in Paragraphs 15 and 16 of the Motion for Allowance of Administrative Claim refer to legal documents that speak for themselves. To the extent any response by the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraphs 15 and 16 of the Motion for Allowance of Administrative Claim.

71. The Prepetition Lenders deny the allegations contained in Paragraph 17 of the Motion for Allowance of Administrative Claim, including, without limitation, to deny the allegation that the referenced services were undertaken with the purpose of advancing and protecting the interests of general unsecured creditors, and to deny the allegation that the referenced services were necessary to preserve the rights of all unsecured creditors of the Debtors and the Committee.

72. The allegations contained in Paragraph 18 of the Motion for Allowance of Administrative Claim refer to legal documents that speak for themselves. To the extent any response by the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraph 18 of the Motion for Allowance of Administrative Claim.

73. The allegations contained in Paragraph 19 of the Motion for Allowance of Administrative Claim refer to a legal document that speaks for themselves. The Prepetition Lenders admit that the Exhibit A purports to be an invoice of Dentons, but denies that Dentons is entitled to any compensation for the services referenced in the invoice. To the extent any further response by the Prepetition lenders is required, the Prepetition Lenders deny the allegations contained in Paragraph 19 of the Motion for Allowance of Administrative Claim.

74. The allegations contained in Paragraph 20 of the Motion for Allowance of Administrative Claim refer to a legal document that speaks for themselves. To the extent any further response by the Prepetition lenders is required, the Prepetition Lenders deny the allegations contained in Paragraph 20 of the Motion for Allowance of Administrative Claim, specifically, without limitation, that such document supports any claim of Dentons for compensation.

RELIEF REQUESTED

75. The Prepetition Lenders deny the allegations contained in Paragraph 21 of the Motion for Allowance of Administrative Claim.

BASIS FOR RELIEF

76. Paragraphs 22 and 23 of the Motion for Allowance of Administrative Claim contain legal conclusions to which no response is required. To the extent any response of the Prepetition Lenders is required, the Prepetition Lenders deny the allegations contained in Paragraphs 22 and 23 of the Motion for Allowance of Administrative Claim, specifically, without limitation, that Dentons is entitled to compensation under the cited provisions.

77. The Prepetition Lenders deny the allegations contained in Paragraphs 24-27 of the Motion for Allowance of Administrative Claim.

CONCLUSION

78. The text following the heading entitled "Conclusion" contains legal conclusions to which no response is required. To the extent a response is required, the Prepetition Lenders deny the allegations contained under the text entitled "Conclusion," specifically, without limitation, that Dentons is entitled to any of the relief requested therein.

Dated: January 24, 2024
Portland, Maine

/s/ Robert J. Keach

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Counsel for Henry R. Lewis and the Henry R. Lewis Trust u/t/d November 24, 2004

CERTIFICATE OF SERVICE

I, Robert J. Keach, Esq., being over the age of eighteen and an attorney at Bernstein, Shur, Sawyer & Nelson, P.A., in Portland, Maine, hereby certify that on January 24, 2024, I filed the foregoing document via the Court's CM/ECF electronic filing system ("CM/ECF"), which sent notice to all parties receiving notification through CM/ECF.

Dated: January 24, 2024
Portland, Maine

/s/ Robert J. Keach

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