

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF CALIFORNIA
3 FRESNO DIVISION

4 In re) Case No. 03-11610-B-7
5 Central Valley Processing, Inc.,)
6 Debtor.)
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8 **MEMORANDUM DECISION REGARDING WALTER LAW GROUP'S
9 SECOND APPLICATION FOR APPROVAL OF ATTORNEY FEES AND
10 EXPENSES AND JOINT MOTION TO SURCHARGE COLLATERAL**

11 Riley C. Walter, Esq., of the Walter Law Group, appeared on behalf of the Walter Law Group.

12 T. Scott Belden, Esq., of Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, appeared on behalf of the chapter 7 trustee (and former chapter 11 trustee) Michael McGranahan.

13 Michael T. Hertz, Esq., of Lang, Richert & Patch appeared on behalf of the objecting creditors Andy Pursley, George Crafton, Norman Dill and Karen Torrano (collectively, the "Objecting Creditors").

14 Thomas G. Mouzes, Esq., of Hauser & Mouzes appeared on behalf of objecting creditor Brent Zehrung ("Zehrung").

15
16 The Application for Payment of Chapter 11 Final Fees and/or Expenses (the "Second
17 WLG Fee Application") filed by the Walter Law Group ("WLG") and the Joint Motion for
18 Authority to Surcharge Collateral under 11 U.S.C. § 506(c) (the "Second Surcharge
19 Motion") filed by WLG and Michael McGranahan (the "Trustee") were heard on April 28,
20 2004. The parties were given an opportunity to submit supplemental briefs and the matters
21 were taken under submission effective May 28, 2004. The court deferred ruling on these
22 matters pending the outcome of Objecting Creditors' appeal of a prior ruling in favor of
23 WLG. That appeal was dismissed on March 30, 2005.

24 This Second WLG Fee Application seeks final approval pursuant to 11 U.S.C. § 330
25 for services rendered by WLG as counsel for the Growers' Committee, during the time this
26 case was in chapter 11. The Second Surcharge Motion seeks authority to have WLG's fees
27 paid from a segregated fund referred to herein as the Grower Proceeds. The court has
28 jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 330, 331, 506

1 & 105. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). For the reasons set
2 forth below, the Second WLG Fee Application will be treated as an interim application
3 pursuant to 11 U.S.C. § 331, and will be approved. The Second Surcharge Motion will also
4 be granted on an interim basis.

5 **Background.**

6 **The Growers' Committee.**

7 This bankruptcy case commenced with a voluntary petition under chapter 11 on
8 February 21, 2003. The Debtor was in the business of processing and selling almonds which
9 the Debtor purchased from numerous entities. At commencement of this case, the Debtor
10 owed money to approximately 64 persons and entities who had grown and delivered almonds
11 to the Debtor in the 2002 crop year (the "Growers"). The Debtor was also in possession of
12 approximately four million pounds of unprocessed almonds which the Debtor had purchased
13 from the Growers (the "Almond Inventory"). Prior to commencement of the case, the
14 Debtor had been selling processed almonds without paying the Growers as required by the
15 California Food and Agricultural Code. The Debtor's lender, American Ag. Credit
16 ("AAC"), had a lien on the Debtor's accounts receivable and it appeared that the Debtor had
17 been using proceeds from the sale of almonds to, *inter alia*, make debt service payments to
18 AAC.

19 Early in the case, the Debtor brought a motion for use of AAC's cash collateral, the
20 pre-petition accounts receivable. The Debtor also sought permission to, in essence, continue
21 selling the Almond Inventory and to use those proceeds to pay operating expenses. The
22 Debtor proposed to give AAC a replacement lien against the Almond Inventory as "adequate
23 protection" for the used cash collateral. This court denied the cash collateral motion without
24 prejudice. However, through that proceeding it became apparent to the court that the
25 Growers, as a group, had priority lien rights against the Almond Inventory pursuant to
26 California Food and Agricultural Code section 55631 (the "Grower Liens"). It also became
27 apparent that (1) many Growers would suffer serious financial hardship if the Almond
28 Inventory was not liquidated and the proceeds distributed to the Growers as soon as possible,

1 and (2) the Growers' rights under State law were not being recognized, honored, or protected
2 by the Debtor.

3 Objecting Creditors are former shareholders and directors of the Debtor. Prior to
4 commencement of the bankruptcy, they sold their shares to an outside investor and resigned
5 from the Debtor's board of directors. Objecting Creditors apparently sold almonds to the
6 Debtor and claimed Grower Lien rights along with the other Growers.

7 As secured creditors, the Growers had common interests which were adverse to both
8 the Debtor, Debtor's management, and the unsecured creditors. Each Grower had an
9 undivided equal priority interest in a common asset, the Almond Inventory, which was not
10 large enough to satisfy all of the Grower claims. Because of the size and disparity of the
11 Grower group, the common nature of the Grower Liens, and the possibility of other rights
12 and remedies available to the Growers under State law, the court determined that it was
13 neither practical nor prudent to require each Grower to hire independent counsel to protect
14 its rights in this case. Further, the court concluded that the common interests of the Growers
15 could not be effectively represented by either the Debtor, a trustee, or a committee of
16 unsecured creditors. For that reason, the court *sua sponte* ordered the appointment of the
17 Growers' Committee pursuant to 11 U.S.C. § 1102 (a)(2) and the court's inherent authority
18 under 11 U.S.C. § 105(a)¹ to represent and protect the Growers' rights under, *inter alia*, the
19 Cal. Food and Agric. Code. The Growers' Committee was appointed on March 13, 2003.

21 ¹ 11 U.S.C. section 1102(a)(2) states in pertinent part:

22 On request of a party in interest, the court may order the appointment of
23 additional committees of creditors . . . if necessary to assure adequate
24 representation of creditors The United States trustee shall appoint any such
25 committee.

26 11 U.S.C. § 105(a) states in pertinent part:

27 The court may issue any order, process, or judgment that is necessary
28 or appropriate to carry out the provisions of this title. No provision of this title
providing for the raising of an issue by a party in interest shall be construed to
preclude the court from, *sua sponte*, taking any action or making any
determination necessary or appropriate to enforce or implement court orders or
rules, or to prevent an abuse of process.

1 On April 4, 2003, the court authorized the Growers' Committee to employ WLG as its
2 counsel.

3 **The Segregated Grower Proceeds.**

4 On June 5, 2003, the court authorized the Debtor to process and sell the Almond
5 Inventory. That effort generated net proceeds of approximately \$3.1 million. However, the
6 court ordered the Debtor to segregate the proceeds pending a determination of how to
7 distribute those funds in compliance with applicable law (the "Grower Proceeds"). The
8 court also ordered that the statutory Grower Liens would attach to the Grower Proceeds,
9 subject to further order of the court. The processing costs were to be financed with AAC's
10 cash collateral. The court authorized in advance a surcharge of the Grower Proceeds, not
11 to exceed 5.68 cents per pound of unprocessed almonds, to reimburse AAC for the expenses
12 associated with liquidation of the Almond Inventory.

13 **The Chapter 11 Trustee.**

14 On August 12, 2003, the court ordered the appointment of a chapter 11 trustee based
15 upon a showing that the Debtor's management had conflicts of interest and was unable to
16 properly administer the estate. Michael McGranahan was appointed to serve as the chapter
17 11 trustee. By that time, the Growers' Committee, by default, had become actively involved
18 in administrative activities which were not being handled by Debtor's management. The
19 Growers' Committee assisted the U.S. Trustee in its effort to remove the Debtor's
20 management from control. The court authorized the Trustee to continue processing and
21 selling the remaining Almond Inventory subject to the Growers' Committee's oversight and
22 protection of the Grower Liens. The Committee also undertook the investigation of claims
23 asserted by the individual Growers themselves, including those of the Objecting Creditors.
24 The Committee worked to confirm the amounts of the Growers' claims and whether they
25 qualified to be on the Growers' Committee and to participate in any distribution of Grower
26 Proceeds.

27 On November 26, 2003, the case was converted to chapter 7 pursuant to 11 U.S.C.
28 § 1112(b) on motion of the U.S. Trustee. Michael McGranahan was reappointed to continue

1 as the chapter 7 trustee. The Grower Proceeds had not yet been distributed and the court also
2 authorized the Growers' Committee to continue functioning with WLG as its counsel.

3 **WLG's First Interim Fee Award and Surcharge Order.**

4 On October 3, 2003, this court approved WLG's first interim application for fees in
5 the amount of \$45,906.50 and expenses in the amount of \$3,316.48 (the "First Interim Fee
6 Award"). The chairman of the Growers' Committee and the Trustee supported WLG's fee
7 application. The Objecting Creditors opposed it. The First Interim Fee Award was
8 interlocutory and non-appealable.

9 In a companion motion, WLG also sought to surcharge the First Interim Fee Award
10 against the Grower Proceeds (the "First Surcharge Motion"). The First Interim Fee Award
11 expressly prohibited the actual payment of any fees until the court ruled on the First
12 Surcharge Motion. Again, the Committee and the Trustee supported the First Surcharge
13 Motion; the Objecting Creditors opposed it.

14 The Trustee and the Growers' Committee completed their evaluation of the Growers'
15 claims and prepared a schedule showing their calculation of how much each Grower had
16 already been paid and how much each Grower was still owed for its 2002 crop. On
17 December 11, 2003, this court approved the Trustee's request to distribute some of the
18 Grower Proceeds. The Trustee was authorized to make an interim distribution of
19 \$2,642,092.90 to Growers, such that they would each realize a minimum 50% payment of
20 their claims (the "First Grower Distribution Order").² Objecting Creditor Dill received
21 \$125,267.95 in the First Distribution. Objecting Creditor Crafton apparently also received
22 some payment, although his name is not on the distribution list. Objecting Creditors Pursley
23 and Torrano were not paid anything under the First Grower Distribution Order because they
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26 ²The First Grower Distribution Order was structured to assure that each Grower
27 received at least 50% of its claim for the 2002 crop. Some of the Growers, who had
28 already received more than 50% for their crop, objected to the proposed distribution.
They demanded that the money be distributed to all Growers based on the unpaid
balance of their claims. The court overruled that objection and not all Growers received
a distribution of Grower Proceeds.

1 had already been paid in excess of 50% of their claims.

2 On December 29, 2003, the court ruled that WLG's First Interim Fee Award could
3 be paid from the Grower Proceeds (the "First Surcharge Order"). The Trustee made the
4 disbursements as directed in the First Grower Distribution Order and the First Surcharge
5 Order. The court is informed that there are about \$370,000 of remaining Grower Proceeds.
6 The surcharge paid to WLG represented approximately 1.5% of the total distribution.

7 **The Appeal.**

8 The Objecting Creditors appealed the First Surcharge Order to the U.S. District Court
9 on December 31, 2003 (the "Surcharge Appeal"). The First Surcharge Order was still on
10 appeal when the court heard oral argument on this Second WLG Fee Application. The
11 Surcharge Appeal potentially affected the court's ability to further surcharge the Grower
12 Proceeds and the court was not persuaded that WLG's fees should be paid from the general
13 estate. The court therefore deferred ruling on this matter until the Surcharge Appeal was
14 resolved.

15 The Surcharge Appeal was dismissed by the District Court for lack of subject matter
16 jurisdiction on March 30, 2005 (the "Appeal Dismissal Order"). In the Appeal Dismissal
17 Order, the District Court held that the First Surcharge Order was interlocutory and non-
18 appealable. The District Court also held that Objecting Creditors Pursley and Torrano did
19 not have standing to object to surcharge of the Grower Proceeds because they were not
20 entitled to receive any payment under the First Grower Distribution Order – the Debtor had
21 already paid Pursley and Torrano more than 50% for their 2002 crop. The District Court
22 observed, "Appellants Pursley and Torrano thus did not have an interest in the funds to be
23 distributed, to which the surcharge applied."

24 **The Second Fee Application and Surcharge Motion.**

25 In this Second WLG Fee Application, WLG seeks an additional award of \$61,069.50
26 for fees, plus \$7,433.30 for costs incurred in the period between its first application and
27 conversion of the case to chapter 7. WLG also seeks to have its fees and costs paid from the
28 remaining Grower Proceeds. The chairman of Growers' Committee, Jim Frazier, filed a

1 statement affirmatively approving both requests. The Trustee also filed a statement
2 affirmatively approving WLG's fees, at least to the extent of those services rendered after
3 the Trustee's initial appointment. The Trustee stated, "[WLG's] services significantly aided
4 the Trustee's efforts to distribute the proceeds from the sale of Debtor's post-petition almond
5 inventory. Applicant zealously represented the interests of the grower body throughout that
6 process" The Trustee joined WLG in the Second Surcharge Motion.

7 WLG requests compensation for 223.7 hours of legal service. This calculates to a
8 blended hourly rate of \$273. WLG's fees are allocated in "project categories" as follows:

<u>Project</u>	<u>Total Fee Charged</u>
Case Administration	\$ 5,443.50
Claims Administration and Objections	\$ 1,422.00
Estate/Business Operations	\$ -0-
Fee/Employment Application	\$ 4,770.00
Financing	\$ 1,170.00
Litigation/Other Contested Matters	\$40,011.00
Plan and Disclosure Statement	\$ 210.00
Relief From Stay/Adequate Protection	\$ 322.50
Sales, Leases & Dispositions	\$ 7,720.50

15 **Creditor Objections.**

16 Objecting Creditors and Zehrung filed objections to the Second WLG Fee
17 Application. The principal objection raised by both goes to the proposed treatment of the
18 Second WLG Fee Application as a final fee application. Objecting Creditors also objected
19 to the Second Surcharge Motion. They argued that the court could not make a final ruling
20 because of the then pending Surcharge Appeal. However, dismissal of the Surcharge Appeal
21 while this matter was under submission makes that objection a moot issue.

22 Objecting Creditors also object on procedural grounds that they were not given
23 sufficient opportunity to respond to the Second Surcharge Motion. However, they did
24 respond fully to the Second Surcharge Motion in their Additional Points and Authorities.
25 Further, the court's decision to treat both the Second WLG Fee Application and the Second
26 Surcharge Motion as motions for interim relief, makes this objection a moot issue as well.

27 The various objections are summarized generally as follows:

28 (1) WLG's overall fees are excessive for the work performed by WLG in comparison

1 with the work performed by Debtor's counsel;

2 (2) The hourly billing rate charged by Riley Walter is excessive in relation to the
3 prevailing rate charged for similar services by other attorneys in the area. They also
4 complain that WLG raised its billing rate during the billing period "without giving
5 notice to anyone but the Committee";

6 (3) Objecting Creditors object to fees charged in an unstated amount for "litigation";
7 fees totaling \$13,254 relating to engagement of the Drummond Law Firm; work done
8 early in the case totaling \$2,480 to recruit and support the appointment of a chapter
9 11 trustee; work performed totaling \$720 to bring the First Surcharge Motion;
10 expenses totaling \$576 relating to WLG's support of "criminal" matters; services
11 totaling \$1,380 for opposing conversion of the case to chapter 7; and services
12 rendered in an unstated amount outside of the scope of WLG's appointment; and

13 (4) Objecting Creditors raise 15 "miscellaneous" objections to specific time entries
14 on WLG's billing records totaling \$2,288; and

15 (5) That WLG has not made a showing sufficient to support surcharge of the Grower
16 Proceeds under 11 U.S.C. § 506(c).

17 **WLG's Response.**

18 In reply to the above objections, WLG responds in summary as follows:

19 (1) The Objecting Creditors were insiders of the Debtor, they participated in the
20 Debtor's demise and are themselves targets of the Committee's litigation activities
21 undertaken for the benefit of the Growers who were not paid in compliance with
22 California law;

23 (2) Over 60 of the members of the Growers' Committee did not object to WLG's
24 fees, or to surcharge of the Grower Proceeds;

25 (3) WLG makes an offer of proof that Growers holding over 54% of the Grower
26 claims have affirmatively consented to approval of WLG's fees and payment of those
27 fees from the Grower Proceeds. (The court notes that those consents are not part of
28 the record.);

(4) The Trustee supported the Second WLG Fee Application and actually joined in
the Second Surcharge Motion;

(5) Objecting Creditors lack standing to object to surcharge of any Grower Proceeds
other than the pro-rata portion which they will receive upon further distribution, if
any;

(6) WLG offered to waive the portion of its fees which would be otherwise
surcharged against the Objecting Creditor's share of the Grower Proceeds. Objecting
Creditors refused to accept the waiver and purport to prosecute their objections on
behalf of all Growers;

(7) That much of the allegedly "excessive" work performed by WLG was the direct
result of Objecting Creditors' efforts to interfere with the Committee's activities,
including the investigation of Objecting Creditors' claims;

(8) That much of the "litigation" work performed by WLG was performed at a time

1 when the Debtor was disabled from performing its duties as a debtor-in-possession.
2 The product of WLG's litigation activities was passed on to the Trustee for use in
litigation to be pursued by the Trustee;

3 (9) That the Drummond Firm was brought into the case to prosecute State court
4 claims against AAC and third parties, relating to non-payment of the Growers, for
the benefit of all Growers who chose to join in that litigation;

5 (10) That the Objecting Creditors opposed the prosecution of claims against AAC
6 because they had personally guaranteed the debt to AAC; and

7 (11) That activities related to a potential criminal investigation were appropriate
8 because the non-payment of Growers has potential criminal implications under
California law.

9 **Analysis.**

10 **WLG is Entitled to An Interim Award and Surcharge of Its Fees.**

11 The real difficulty with these motions lies in the fact that WLG brought them as
12 motions for final relief; for final approval and payment of a chapter 11 administrative
13 expense. However, after much review and consideration of the moving and opposing papers,
14 and the record of this case, it is the court's conclusion that the issues raised herein cannot
15 be finally adjudicated at this time. At the time WLG filed its Second Fee Application, the
16 case had recently been converted to chapter 7 and it was not clear if the Growers' Committee
17 had much left to do in the case. Ordinarily, upon conversion of a case from chapter 11, the
18 appointed committees are dissolved and final approval of chapter 11 professional fees is
19 appropriate. However, the Growers' Committee continues to function in this case, WLG
20 continues to provide services for the Committee, and activities are ongoing in an effort to
21 get the Growers paid. Indeed, WLG has a third fee application set for hearing in this court
22 on September 29, 2005. Objecting Creditors and others have again filed objections to
23 WLG's third application on many of the same grounds raised here, including allegations that
24 WLG's services did not benefit the Growers. Based on the court's preliminary review of
25 WLG's third application, and the related objections, it is now clear that the ultimate purpose
26 behind formation of the Growers' Committee, payment of the Grower claims, will not be
27 fully realized, and the results of WLG's employment cannot be fully evaluated, until the
28 conclusion of the case, or at least until termination of the Growers' Committee.

1 If this were a final motion for fees, under 11 U.S.C. § 330, the court would have to
2 consider, *inter alia*, “whether the services were necessary to the administration of, or
3 beneficial at the time at which the service was rendered toward the completion of, a case
4 under [Title 11].” 11 U.S.C. § 330(a)(3)(C). However, the court cannot effectively
5 distinguish between the “necessity and benefit” of WLG’s services in the chapter 11 and the
6 “necessity and benefit” of those services rendered after conversion to chapter 7. Much of
7 the work which the Committee did in the chapter 11 continued through to the chapter 7 –
8 presumably, it is the foundation for results which may not be realized until conclusion of the
9 case. Litigation activities are proceeding for the benefit of Growers and creditors in both the
10 State and Federal Court. It appears that WLG is working on these activities in cooperation
11 with the Trustee. If some of WLG’s services benefitted the general estate more than the
12 Committee, then the value of those services can be quantified and charged to the estate at
13 the conclusion of the case. If the Growers ultimately get fully paid from other sources, the
14 issue of surcharging the Grower Proceeds will become moot.

15 For the same reasons, the court must also treat the Second Surcharge Motion as a
16 motion for interim relief. This result is consistent with the Appeal Dismissal Order where
17 the District Court observed that the subject of the appeal, the First Surcharge Order, did “not
18 represent a final determination of a discrete issue because the issue of payment to WLG . .
19 . will be ongoing. The final amount to be paid [to] WLG will not be determined until the
20 conclusion of this case; if the surcharge orders are viewed as final, it will result in multiple
21 appeals. Such appeals are offensive to all notions of finality, both conventional and
22 pragmatic.”

23 In light of the substantial amount of fees at issue, the complexity of the issues, and
24 the relatively sparse admissible evidence actually presented by either side in relation to these
25 issues, it is clear to the court that a full evidentiary hearing may be required before the court
26 can make a final determination of (1) how much WLG should be paid for its services, and
27 (2) how to allocate that cost between the Growers and the general estate. Only through a full
28 evidentiary hearing can this court make the findings it will be required to make as to what

1 fees and costs were necessary and beneficial (11 U.S.C. § 330) and whether WLG’s services
2 provided a quantifiable benefit to the objecting parties. *Debbie Reynolds Hotel & Casino,*
3 *Inc. v. Calstar Corporation, Inc. (In re Debbie Reynolds Resorts, Inc.),* 255 F.3d 1061, 1068
4 (9th Cir. 2001) (citation omitted).

5 At the same time, the court does not believe it is appropriate to deny WLG the right
6 to receive interim compensation for its services. The objections come from only five
7 creditors, two of which did not even have standing to object to the First Surcharge Order.
8 The Committee and the Trustee support the relief sought in both motions. WLG has made
9 an offer of proof regarding affirmative consent from many of the Growers. As the District
10 Court noted in the Appeal Dismissal Order, the actual monetary impact of the surcharge
11 against each objecting creditor is relatively small. The court does not have enough evidence
12 to make an interim apportionment of WLG’s fees against the general estate at this time.
13 There are other pending claims against the remaining Grower Proceeds and the court cannot
14 authorize any further distribution to Growers until those claims are resolved.³ The rights of
15 the objecting parties will be protected so long as any award of fees to WLG remains subject
16 to subsequent disgorgement at the conclusion of a final hearing. An interim fee award
17 pursuant to § 331 is interlocutory; it is always subject to reexamination and future
18 adjustment. Interim fee awards are not disfavored. “The limited purpose of [§ 331] is to
19 provide financial relief to court-appointed officers engaged in protracted bankruptcy
20 litigation, so that these officers do not have to wait for what may be years before receiving
21 compensation” (citations omitted) *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 858 (9th
22 Cir. 2004).

23 **Scope of Future Surcharge Proceedings.**

24 Before concluding this memorandum, it is appropriate to comment on the Appeal
25 Dismissal Order and the affect it will be given by this court in future proceedings. The
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27 ³Creditor Ken Spagnola has filed an adversary proceeding against the Trustee
28 and all Growers asserting a claim in excess of \$240,000 against the remaining Grower
Proceeds.

1 Appeal Dismissal Order resolves two of the issues raised by WLG in its reply to Objecting
2 Creditors, those of their standing and the scope of their authority. The District Court held
3 in the Appeal Dismissal Order that Objecting Creditors Pursley and Torrano lacked standing
4 to appeal the First Surcharge Order, “because neither was entitled to any of the monies to
5 which the [First] surcharge order applied. . . . Appellants Pursley and Torrano thus did not
6 have an [direct and immediate pecuniary] interest in the funds to be distributed, to which the
7 surcharge applied.”

8 This portion of the Appeal Dismissal Order defines the rules for review of future
9 surcharge motions in two respects. First, the District Court’s determination that Pursley and
10 Torrano lacked standing to object to surcharge of the Grower Proceeds, because they did not
11 have a direct and immediate pecuniary interest in the fund, is now the law of the case. As
12 such, it must be followed in both this ruling and in all subsequent proceedings in the same
13 case. *American Express Travel Related Services Company, Inc. v. Fraschilla (In re*
14 *Fraschilla)*, 235 B.R. 449, 454 (9th Cir. BAP 1999). Unless an objecting party can show that
15 surcharge of the Grower Proceeds has or will directly, immediately and materially reduce
16 the payment which that party has or will receive from the fund, then it is not appropriate for
17 this court to consider that party’s objection to a surcharge request – such party will lack
18 standing.

19 Second, the District Court’s holding against Pursley and Torrano on the standing
20 issue means, by clear implication, that each Grower may only object to surcharge of its
21 ratable share of the Grower Proceeds. Objecting Creditors purport to represent the interests
22 of all Growers with regard to surcharge of the Grower Proceeds, even those who did not
23 object and who may even consent. The District Court apparently rejected that argument.

24 This court appointed the Growers’ Committee because the Growers stood in a unique
25 position; by California law they all had an undivided, equal priority interest in a common
26 asset, the Almond Inventory. Further, not all eligible Growers had received the same level
27 of payments from the Debtor prior to bankruptcy. Some Growers, such as Pursley and
28 Torrano had, for one reason or another, already received a substantially higher percentage

1 of payment for their 2002 crop than did the others. In the prior proceedings, this court tried
2 to distribute the Grower proceeds in a fair and equitable manner to (1) minimize the obvious
3 financial hardship to the unpaid Growers and (2) prevent some Growers from realizing an
4 economic advantage over the others. The Growers' Committee was appointed to protect and
5 to advocate the interests that are common to all of the Growers. That does not mean,
6 however, that all Growers necessarily have the same interests. Neither does it mean that any
7 one Grower, nor a subgroup of Growers, may usurp the authority of the Committee's
8 chairman to speak on matters relating to governance of the Committee itself. Compensation
9 of the Committee's counsel is an administrative matter subject to this court's jurisdiction,
10 but in this case, it is also a matter of Committee governance, at least to the extent that the
11 members of the Committee, and not the general estate, are being asked to pay that cost from
12 their collateral.

13 To the extent that any surcharge of the Grower Proceeds materially reduces the
14 distribution of money to an individual Grower, that Grower is certainly entitled to object and
15 be heard; the consensus of the Committee cannot be forced on any individual member.
16 However, this court will only consider that objection in relation to the objecting party's
17 ratable share of the Grower Proceeds. If the Committee otherwise approves the fees and the
18 surcharge request, and the court is otherwise satisfied that surcharge of the Grower Proceeds
19 is fair, equitable and appropriate under the Bankruptcy Code, it will rule accordingly.

20 **Conclusion.**

21 Based on the foregoing, the court finds and concludes that the Second WLG Fee
22 Application and the Second Surcharge Motion shall be deemed to be motions for interim
23 relief, subject to final adjudication at the conclusion of this case, or whenever the court
24 terminates the Growers' Committee and the full effect of the Committee's activities can be
25 known. The Second WLG Fee Application shall be APPROVED. The Second Surcharge
26 Motion shall be GRANTED. The Trustee shall distribute from the available Grower
27 Proceeds to WLG the sum of \$61,069.50 for legal fees and \$7,433.30 for reimbursement of
28 costs. All fees and costs paid to WLG prior to a final hearing shall be subject to

1 disgorgement, if appropriate. All objections to the Second WLG Fee Application shall be
2 OVERRULED without prejudice to renewal at a final hearing. Pursley and Torrano's
3 objections to the Second Surcharge Motion shall be OVERRULED for lack of standing. All
4 other objections to the Second Surcharge Motion shall be OVERRULED without prejudice
5 to renewal at a final hearing, if necessary.

6 Dated: September _____, 2005

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8 /s/ W. Richard Lee
9 W. Richard Lee
10 United States Bankruptcy Judge
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