

1  
2 POSTED ON WEBSITE

3  
4 NOT FOR PUBLICATION

5  
6 UNITED STATES BANKRUPTCY COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
8 FRESNO DIVISION

9 In re ) Case No. 11-16468-B-11  
10 )  
11 Manuel R. Santos and ) DC No. DLF-1  
12 Maria J. Santos, )  
13 )  
14 Debtors. )  
15 \_\_\_\_\_ )

16  
17 **MEMORANDUM DECISION REGARDING**  
18 **APPLICATION FOR COMPENSATION**

19 This disposition is not appropriate for publication. Although it may be cited  
20 for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has  
21 no precedential value. See 9<sup>th</sup> Cir. BAP Rule 8013-1.

22 Michael A. Dias, Esq., of the Dias Law Firm, Inc., appeared as special  
23 counsel on behalf of the debtors.

24 Craig B. Fry, Esq., of Lang, Richert & Patch, appeared on behalf of the  
25 creditor, Farm Credit West, PCA and Farm Credit West, FLCA.

26 Gregory Powell, Esq., appeared on behalf of August B. Landis, Acting  
27 United States Trustee.

28 Before the court is an application for approval and payment of  
interim professional fees filed by the Dias Law Firm for services rendered  
as special counsel for the debtors, Manuel and Maria Santos (the  
“Debtors”). For the reasons set forth below, the application will be  
approved in a reduced amount.

This memorandum decision contains findings of fact and conclusions  
of law required by Federal Rule of Civil Procedure 52(a), made applicable  
to this contested matter by Federal Rules of Bankruptcy Procedure 7052

1 and 9014(c).<sup>1</sup> The bankruptcy court has jurisdiction over this matter  
2 pursuant to 28 U.S.C. §§ 1334 and 157, 11 U.S.C. § 523, and General  
3 Orders 182 and 330 of the U.S. District Court for the Eastern District of  
4 California. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

5 **Background and Findings of Fact.**

6 On June 3, 2011, the Debtors filed a petition under chapter 11. On  
7 September 12, 2011, this court approved employment of the Dias Law Firm  
8 to serve as the Debtors' special counsel ("Special Counsel"). The Debtors  
9 are dairy farmers. They employed Special Counsel to negotiate multiple  
10 leases and to work on other nonbankruptcy transactional matters. Michael  
11 Dias ("Dias") was the only attorney at the Dias Law Firm who worked on  
12 this case.

13 Special Counsel now submits an interim application for approval and  
14 payment of the fees it incurred for legal services rendered between August  
15 17 and December 7, 2011 ("Fee Application"). Specifically, Special  
16 Counsel requests payment in the amount of \$10,384.50 based on 48.3 hours  
17 billed at Dias's billing rate of \$215.00 an hour. It has not requested  
18 reimbursement of any expenses in its Fee Application. Attached to the Fee  
19 Application as an exhibit is a computerized printout of 32 separate time  
20 entries. Two out of the 32 entries are for 2.2 hours (Entry No. 275552 on  
21 September, 30, 2011) and for 0.6 hours (Entry No. 275549 on October 28,  
22 2011). The other 30 entries are billed in even increments of 0.5 hours, or 30  
23 minutes, with time entries ranging from 0.5 to 4.0 hours.

---

24  
25  
26 <sup>1</sup>Unless otherwise indicated, all chapter, section and rule references are to  
27 the Bankruptcy Code, 11 U.S.C. §§ 101–1330, and to the Federal Rules of  
28 Bankruptcy Procedure, Rules 1001–9036, as enacted and promulgated after  
October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and  
Consumer Protection Act of 2005 (BAPCPA), Pub. L. 109-8, 119 Stat. 23  
(enacted April 20, 2005).

1 Also, several of Special Counsel's billing entries show a practice of  
2 "lumping," such that multiple, separable tasks performed by Dias are  
3 nevertheless included within a single billing entry. Three notable examples  
4 of "lumping" in the Fee Application are found in Entries No. 271934 on  
5 September 19 (billing two hours), No. 272504 on September 28 (billing  
6 four hours), and No. 272687 on September 29, 2011 (billing three hours).  
7 The first of these three entries provides the following description of the  
8 services rendered:

9 Telephone conference with Attorney Bettencourt regarding  
10 lease modifications and contact with client; review e mail  
11 from client forwarding e mail from Riley regarding deadline  
12 and information on lease and tax consequences; conference  
13 with client regarding counter offer, e mail from Walter and  
14 residence lease agreement; conference with Attorney  
Bettencourt regarding counter offer to his counter offer  
deadline to present leases to court; conference with client  
regarding further offers and negotiations; review dairy lease  
agreement and residential lease agreement regarding rental  
payments and WQCB.

15 The second entry states the following:

16 Preparation of First Amended Farm Lease Agreement;  
17 preparation of First Amended Residential Lease Agreement;  
18 preparation of First Amended Dairy Lease Agreement;  
19 conference with clients to discuss review of farm lease,  
20 amended dairy lease and amended residential lease and  
modifications; preparation of correspondence to Attorney  
Bettencourt forwarding Lease Agreements for review and  
comment.

21 Lastly, the third entry's description provides:

22 Finalize dairy lease, farm lease and residential lease;  
23 preparation of e mail to Attorney Bettencourt forwarding  
24 same; review e mail from Bettencourt requesting merger of  
25 old lease and new lease for side by side comparison; merge  
26 same; preparation of e mail to Attorney Bettencourt  
27 forwarding merged lease agreements; preparation of e mail to  
28 Riley regarding status of lease agreements; review response  
regarding deadline on September 30th at noon; preparation of  
e mail to Attorney Bettencourt regarding deadline; telephone  
conversation with Attorney Bettencourt; regarding revisions  
to lease and review for approval and finalizing; review  
revised Amended Dairy Lease; forward to Attorney Dias and

1 client for review; conference with Josh regarding review of  
2 dairy lease and requested changes to recitals, rent, use and  
3 standard agreements, attorney fees, binding court approval,  
4 etc.; review redline version of dairy lease; review  
correspondence from Attorney Bettencourt forwarding farm  
and residential attached.

5 In support of its Fee Application, Special Counsel also filed a  
6 supplemental declaration by Dias. Dias states that the computerized billing  
7 entries submitted to the court are based on his own handwritten entries,  
8 which were later transferred to the computer by the firm's account manager.  
9 According to Dias, these handwritten billing entries are no longer available  
10 as they have been destroyed, so they could not and were not attached with  
11 the Fee Application. Further, Dias states that the computerized billing  
12 entries have already been adjusted to account for any non-client-related  
13 interruptions. Dias performs this billing practice because "most [of Special  
14 Counsel's] clients hate to be charged for every little time increment." He  
15 "give[s] the benefit of breaks, interrupting phone calls, other non client  
16 issues to the client and [has] systematically reduced [his] time most often to  
17 even increments by the quarter hour."

18 **Analysis and Conclusions of Law.**

19 Section 330 of the Bankruptcy Code governs compensation to  
20 professionals. It provides, in pertinent part, that the court may award  
21 "reasonable compensation for actual, necessary services rendered" by such  
22 professionals. § 330(a)(1)(A). In the Ninth Circuit, the customary method  
23 for determining the award of reasonable attorney's fees is by the "lodestar"  
24 method. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996),  
25 *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by  
26 multiplying the number of hours the prevailing party reasonably expended  
27 on the litigation by a reasonable hourly rate." *Id.* (citation omitted). Use of  
28 the "lodestar" method though is not mandatory. *See Unsecured Creditors'*

1 *Comm. v. Puget Sound Plywood, Inc.*, 924 F.2d 955, 961 (9th Cir. 1991)  
2 (concluding that bankruptcy court’s use of alternative formula rather than  
3 lodestar method was not abuse of discretion).

4       The process of determining fees, however, must begin with the fee  
5 application itself. Federal Rule of Bankruptcy Procedure 2016 provides,  
6 “An entity seeking interim or final compensation for services . . . from the  
7 estate shall file an application setting forth a *detailed* statement of (1) the  
8 services rendered, time expended and expenses incurred, and (2) the  
9 amounts requested.” FED. R. BANKR. P. 2016(a) (emphasis added). “These  
10 *detailed* applications establish the ‘actual,’ while an accompanying  
11 narrative explanation of the ‘how’ and ‘why’ establish the ‘necessary.’” *In*  
12 *re Wildman*, 72 B.R 700, 707 (Bankr. N.D. Ill. 1987) (emphasis in original).  
13 For a fee application, “the fee applicant bears the burden of establishing  
14 entitlement to an award and documenting the appropriate hours expended  
15 and hourly rates.” *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

16       Regardless of whether an objection to a fee application is raised, the  
17 bankruptcy court has the independent duty to “scrutinize the application in  
18 the interest of protecting the integrity of the bankruptcy system.” *In re*  
19 *Pruitt*, 319 B.R. 636, 638 (Bankr. S.D. Cal. 2004) (citation omitted).  
20 “[D]etailed fee applications enable the bankruptcy court to fulfill its  
21 obligation to examine carefully the requested compensation in order to  
22 ensure that the claimed expenses are justified.” *In re Nucorp Energy, Inc.*,  
23 764 F.2d 655, 658 (9th Cir. 1985). This also provides the court with “*sua*  
24 *sponte* authority to ‘award compensation that is less than the amount of  
25 compensation that is requested.’” *In re Eliapo*, 468 F.3d 592, 597 (9th Cir.  
26 2006) (quoting § 330(a)(2)). Given this authority, “a court should only  
27 award fees *to the level* that has been proven to be actual, necessary and  
28 reasonable. Any less requirement would make the applicant’s burden of

proof a mere shell.” *In re Roderick Timber Co.*, 185 B.R. 601, 606 (B.A.P. 9th Cir. 1995) (emphasis in original) (citation omitted) (internal quotation marks omitted).

**Special Counsel’s Billing Practice.**

Though no party has objected to the Fee Application, the court on its own takes issue with some of Special Counsel’s billing practices. First, a number of Special Counsel’s billing entries “lump” together several tasks within a single billing entry, making it difficult for the court to properly evaluate the actual time spent on each mentioned task. For example, the three-hour entry for September 29, 2011 (No. 272687) describes a variety of separable tasks performed by Dias, such as finalizing three separate leases, preparing several different emails to be sent to several different people, participating in a phone conversation and then a separate conference, as well as reviewing emails and other legal documents. Based on this entry’s dense description, within the billed three-hour period, the court has no idea how much time was actually spent on each of these tasks and whether the aggregate amount of time spent was cumulatively three hours. Although Special Counsel was not required to separate out each individual task into its own billing entry, Special Counsel nevertheless should have divided this entry into multiple ones to provide the court with a more accurate and less oversimplified picture of the time actually expended by Special Counsel for the various services rendered to the Debtors. By providing billing entries in this “lumped” form, Special Counsel is asking the court to make a generalized determination that the time expended was reasonable when the law requires more specificity.

Second, the court must address the time increments utilized by Special Counsel. All but two out of the 32 entries are billed in increments of 0.5 hours, rather than the customary 0.1-hour (or six-minute) increments.

1 Given that Special Counsel billed most of its time in minimum 30-minute  
2 increments, the Fee Application appears to represent only an estimation of  
3 the time expended, rather than the actual time.

4 On both issues of lumping and time increments, the court relies on  
5 the guidelines promulgated by the Executive Office of the United States  
6 Trustee, entitled “Guidelines for Reviewing Applications for Compensation  
7 and Reimbursement of Expenses Filed Under 11 U.S.C. § 330” (the  
8 “Guidelines). *See* 28 U.S.C. § 586(a)(3)(A); 28 C.F.R. pt. 58, app. A. The  
9 Guidelines provide, in pertinent part, that

10 Time entries should be kept contemporaneously with the  
11 services rendered in *time periods of tenths of an hour*.  
12 Services should be noted in detail and *not combined or*  
13 *“lumped” together*, with each service showing a separate time  
entry; however, tasks performed in a project which total a de  
minimis amount of time can be combined or lumped together  
if they do not exceed .5 hours on a daily aggregate.

14 *Id.* app. A, sec. (b)(4)(v) (emphasis added). While the Guidelines  
15 themselves do not carry the force of law, the court nevertheless grants them  
16 substantial deference in that “adherence to [the Guidelines] will produce a  
17 fee application sufficiently detailed to be reviewable and to meet the  
18 requirements of Rule 2016(a).” 1 COLLIER ON BANKRUPTCY ¶ 6.27[1], at 6-  
19 71 (16th ed. 2011).

20 Using these Guidelines, the court finds that the Fee Application lacks  
21 sufficient detail to comply with § 330(a)(1)(A) and Rule 2016(a). The  
22 practice of “lumping” prevents the court from evaluating the actual time  
23 expended for each task performed. *See In re Ginji Corp.*, 117 B.R. 983,  
24 989 (Bankr. D. Nev. 1990). Also, Special Counsel’s use of 0.5-hour  
25 increments hinders the court’s ability to determine the actual time expended  
26 since such a large time increment may represent an inaccurate, overinflated  
27 estimation of time. *See In re Four Star Terminals, Inc.*, 42 B.R. 419, 426  
28 n.1 (Bankr. D. Alaska 1984) (noting that short phone calls should be

1 recorded in minimum increments of 0.1 hours, rather than 0.25-hour  
2 increments); *see also In re Stoecker*, 114 B.R. 965, 976 (Bankr. N.D. Ill.  
3 1990) (providing that billing in 0.25-hour increments violates Rule  
4 2016(a)).

5 In his supplemental declaration, Dias explains that the billing entries  
6 submitted to the court represent downwardly adjusted entries that had taken  
7 into account unrelated interruptions and that the original handwritten entries  
8 with the actual expended times had unfortunately been destroyed. Dias  
9 states that he does it this way since his clients dislike being charged for  
10 “every little time increment.” Dias’s explanation though is unpersuasive. It  
11 is the court, not the client, who must approve the fees requested in a  
12 professional’s fee application. The court must review that application based  
13 on the standards presented in the Bankruptcy Code and Rules. It is the fee  
14 applicant’s burden to submit an adequately detailed fee application.  
15 Without detailed time records and properly separated entries, the court lacks  
16 any objective basis for determining an award of fees. *See Wildman*, 72 B.R.  
17 at 708. In this case, Special Counsel has failed to meet its burden of  
18 establishing its entitlement to the requested fee award of \$10,384.50.

19 **The Court’s Adjustments.**

20 In light of the deficiencies in the Fee Application, the court finds it  
21 necessary to make adjustments to the fees requested by Special Counsel. In  
22 reducing the fees, the court must “provide a concise but clear explanation of  
23 its reason for the fee award,” *Hensley*, 461 U.S. at 437, and must also  
24 “articulate with sufficient clarity the manner in which it makes its  
25 determination.” *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th  
26 Cir. 1986) (citation omitted), *amended*, 808 F.2d 1373 (9th Cir. 1987). This  
27 does not require the court to include detailed calculations in its explanation,  
28 but “something more than a bald, unsupported amount is necessary. While



1 the [court] need not set forth in exhaustive detail the method of calculating  
2 an attorney's fee award, at the very least [it] must set forth the number of  
3 hours compensated and the hourly rate applied." *Id.* at 1211 n.3.

4 Other than the entries for September 30, billing 2.2 hours, and for  
5 October 28, billing 0.6 hours, the court will decrease the remaining 30  
6 billing entries by 0.4 hours, such that an entry for 0.5 hours will now  
7 become 0.1 hours and an entry for 1.0 hours will now become 0.6 hours.<sup>2</sup>  
8 This uniform, downward adjustment is intended to represent the smallest  
9 increment of actual time expended within a 0.5-hour time frame given that  
10 Special Counsel billed in 0.5-hour increments and that the court has no idea  
11 whether the services rendered covered the entire 0.5-hour time frame or  
12 some lesser amount of time. Some of Special Counsel's billing entries may  
13 represent an actual half- or full-hour of rendered legal services, but the  
14 court has no evidence of that being the case since the original handwritten  
15 entries no longer exist.

16 While Special Counsel submitted a supplemental declaration  
17 explaining its billing practices, the court finds that explanation to simply be  
18 inadequate. Special Counsel has only provided that it has *generally*  
19 adjusted the billing times in its entries. It has failed to *specifically* set forth  
20 which entries were subject to an adjustment and how much of an adjustment  
21 was made for any such entry. Without the original handwritten entries, the  
22 court has no way of verifying whether billing adjustments were actually  
23 made or whether the submitted billing entries merely represented less-than-  
24 precise time estimations. The court understands and appreciates Special  
25 Counsel's concern about overbilling its clients. However, the more  
26 appropriate billing practice, especially before the bankruptcy court, would  
27

---

28 <sup>2</sup>The adjustments for each billing entry are provided for in Appendix A.

have been for Special Counsel to account for the entire time actually expended for each billing entry and then to take a one-time, general deduction or discount on the total fees requested in its Fee Application. This way the court still has the opportunity to properly evaluate the actual tasks performed by Special Counsel and the actual time expended for each task, without having to do any guesswork.

Following the adjustments made and detailed in Appendix A, the court finds that Special Counsel is entitled to \$7,804.50 in fees for 36.3 billed hours at a rate of \$215 an hour. This figure represents a difference of \$2,580, or a roughly 25% decrease, from the originally requested amount of \$10,384.50.

### Conclusion.

Based on the foregoing, the court approves Special Counsel's Fee Application in part and denies it in part. Special Counsel is entitled to \$7,804.50 in interim fees for the period between August 17 and December 7, 2011.

Dated: March 8, 2012

/s/ W. Richard Lee  
W. Richard Lee  
United States Bankruptcy Judge

**Appendix A.**

	Billing Entry (Slip ID, Date)	Stated Time (Hours)	Stated Amount (\$)	Adjusted Time (Hours)	Adjusted Amount (\$)
01	269128, 08/17/11	1.00	215.00	0.60	129.00
02	269728, 08/18/11	2.00	430.00	1.60	344.00
03	269412, 08/19/11	0.50	107.50	0.10	21.50
04	275544, 08/23/11	0.50	107.50	0.10	21.50
05	269968, 08/24/11	2.00	430.00	1.60	344.00
06	270138, 08/25/11	3.00	645.00	2.60	559.00
07	275545, 08/26/11	1.00	215.00	0.60	129.00
08	275546, 08/31/11	0.50	107.50	0.10	21.50
09	270462, 09/01/11	1.00	215.00	0.60	129.00
10	275548, 09/14/11	0.50	107.50	0.10	21.50
11	271831, 09/15/11	2.50	537.50	2.10	451.50
12	275547, 09/16/11	0.50	107.50	0.10	21.50
13	271842, 09/16/11	1.00	215.00	0.60	129.00
14	271934, 09/19/11	2.00	430.00	1.60	344.00
15	272264, 09/21/11	2.00	430.00	1.60	344.00
16	272361, 09/22/11	1.50	322.50	1.10	236.50
17	272135, 09/23/11	2.00	430.00	1.60	344.00
18	272504, 09/28/11	4.00	860.00	3.60	774.00
19	272685, 09/29/11	2.00	430.00	1.60	344.00
20	272687, 09/29/11	3.00	645.00	2.60	559.00
21	275553, 09/30/11	2.00	430.00	1.60	344.00
22*	275552, 09/30/11	2.20	473.00	2.20	473.00
23	275551, 09/30/11	2.50	537.50	2.10	451.50
24	275550, 09/30/11	0.50	107.50	0.10	21.50
25	272826, 10/03/11	1.00	215.00	0.60	129.00
26	272867, 10/04/11	1.50	322.50	1.10	236.50
27*	275549, 10/28/11	0.60	129.00	0.60	129.00
28	274190, 10/28/11	1.00	215.00	0.60	129.00
29	275029, 11/14/11	0.50	107.50	0.10	21.50

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

30	275426, 11/18/11	0.50	107.50	0.10	21.50
31	275554, 12/06/11	2.00	430.00	1.60	344.00
32	275555, 12/07/11	1.50	322.50	1.10	236.50
		48.30 Hours	\$10,384.50	36.30 Hours	\$7,804.50

\*- denotes billing entries which the court has not adjusted.