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6 Unsecured Creditors of Leap Wireless International, Inc.

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8 **UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

9 In re:
10 LEAP WIRELESS INTERNATIONAL, INC. and
CRICKET COMMUNICATIONS, INC., et al.,
11 Debtors.

12 Fed Tax Id. Nos. 33-0811062 and 33-0879924

Case Nos. 03-03470-A11 through
03-03535-A11

Chapter 11

(Jointly Administered)

**SECOND INTERIM FEE
APPLICATION OF KRAMER
LEVIN NAFTALIS & FRANKEL
LLP, ATTORNEYS FOR THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF
LEAP WIRELESS
INTERNATIONAL, INC., FOR
THE PERIOD OCTOBER 1, 2003
THROUGH JANUARY 31, 2004**

Judge: Hon. Louise DeCarl Adler

Date: May 6, 2004
Time: 10:30 a.m.

21 Kramer Levin Naftalis & Frankel LLP ("Kramer Levin"), counsel to the
22 Official Committee of Unsecured Creditors (the "Committee") for Leap Wireless
23 International, Inc. ("Leap") in these bankruptcy cases, for its application pursuant to 11
24 U.S.C. §§ 330 and 331 and in accordance with (i) the Order Pursuant to Sections 331 and
25 105 of the Bankruptcy Code Establishing Procedures for Interim Compensation and
26 Reimbursement of Expenses of Professionals, dated May 6, 2003 (the "Compensation

1 Order”) and (ii) the Notice of Hearing Re: Fee Applications for Interim Compensation of
2 Professionals and Deadline to File Interim Fee Applications (the “Notice of Fee Hearing”),
3 for a Second Interim Allowance of compensation for services rendered and for
4 reimbursement of expenses incurred in connection therewith, respectfully represents as
5 follows:
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7 INTRODUCTION

8 1. In October of last year, this Court confirmed the Debtors’ Plan after a heavily-
9 contested lengthy confirmation hearing regarding complex issues of asset and enterprise
10 valuation. Kramer Levin was closely involved with every aspect of this difficult, yet
11 ultimately successful process. During the Second Interim Fee Period, Kramer Levin was
12 called upon to file numerous pleadings, appear and argue at several contested hearings
13 (including the multi-day confirmation hearing and the hearing in connection with MCG’s
14 request for a stay pending appeal of the confirmation order), engage in complex and often
15 heated negotiations, and review and comment on countless motions, stipulations, and
16 requests for relief. Kramer Levin respectfully submits that its services in this case
17 throughout the Second Interim Fee Period clearly warrant approval of its requested fees and
18 expenses.
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21 2. Accordingly, by this Application, Kramer Levin seeks (i) an interim allowance of
22 compensation for the professional services rendered by Kramer Levin as counsel for the
23 committee for the period from October 1, 2003 through January 31, 2004 (the “Second
24 Interim Period”) in the aggregate amount of \$429,605.50, representing 941.0 hours of
25 professional and paraprofessional services; and (ii) reimbursement of actual and necessary
26 expenses incurred by Kramer Levin during the Second Interim Period in connection with the
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1 rendition of such professional services and paraprofessional services in the aggregate
2 amount of \$38,769.18. Such amounts reflect a voluntary and discretionary reduction of
3 \$13,982.00 in fees and \$2,154.50 in expenses incurred by Kramer Levin during the Second
4 Interim Fee Period.

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6 BACKGROUND AND STATUS OF THE CASE

7 3. On April 13, 2003, (the "Petition Date"), Leap and Cricket Communications, Inc.,
8 and certain of their subsidiaries (the "Debtors") filed voluntary petitions for relief under
9 chapter 11 of the Bankruptcy Code. The Debtors continue to operate their business and
10 manage their properties as debtors-in-possession pursuant to §§ 1107(a) and 1108 of the
11 Bankruptcy Code. Venue of this proceeding and this application is proper in this district
12 pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought
13 herein are 11 U.S.C. §§ 330 and 331 and Federal Rules of Bankruptcy Procedure 2002(a)
14 and 2016.

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16 4. On April 25, 2003, the United States Trustee for the Southern District of California,
17 pursuant to § 1102 of the Bankruptcy Code, appointed the Committee to represent the
18 interests of the unsecured creditors of Leap. The Committee was comprised of Goldman
19 Sachs, Providence Capital LLC, Qualcomm, Inc., Aspen Advisors, LLC, RBC Dominion
20 Securities Corp. and US National Bank as Indenture Trustee.¹ The Committee voted to
21 retain Kramer Levin as its general bankruptcy counsel and Irell & Manella LLP as
22 California based co-counsel.
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27 ¹ During the Second Interim Fee Period, RBC Dominion Securities Corp. resigned from the Committee.

1 5. By application, dated May 21, 2003, Kramer Levin sought Court approval for its
2 retention as counsel to the Committee nunc pro tunc to April 13, 2003. By order dated June
3 18, 2003, the Court approved of the retention of Kramer Levin as counsel to the Committee.

4 6. This is the Second Interim Application Kramer Levin has filed with the Court for an
5 allowance of compensation and reimbursement of expenses for services rendered to the
6 Committee. This application is submitted pursuant to the terms of the Compensation Order
7 and Notice of Fee Hearing. This application has been reviewed by and approved by the
8 chair of the Committee.
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10 7. On July 31, 2003 an Order was entered Approving Debtors' Disclosure Statement
11 accompanying the Fifth Amended Joint Plan of Reorganization dated as of July 30, 2003,
12 (the "Plan") Fixing Time for Filing Acceptances or Rejections of Plan, Establishing
13 Procedure for Counting Votes, and Approving Form and Manner of Notice and Solicitation.
14 Creditors voted overwhelmingly in support of the Plan. On October 22, 2003, this Court
15 entered an Order approving the Plan (the "Confirmation Order"). On October 28, 2003, this
16 Court denied a motion to stay effectiveness of the Confirmation Order pending appeal.
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18 SUMMARY OF SERVICES RENDERED

19 8. Since being retained by the Committee, Kramer Levin has rendered professional
20 services to the Committee as requested and as necessary and appropriate in furtherance of
21 the interests of the unsecured creditors of Leap. The variety and complexity of issues raised
22 in these cases and the need to act or respond on an expedited basis in furtherance of the
23 Committee's needs have required the expenditure of substantial time by Kramer Levin
24 personnel from several legal disciplines, on an as-needed basis, including on numerous
25 occasions, working into the evening and on weekends.
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1 9. Kramer Levin maintains written records of the time expended by attorneys and
2 paraprofessionals in the rendition of their professional services to the Committee. Such time
3 records were made contemporaneously with the rendition of the services by the person
4 rendering such services and in the ordinary course of Kramer Levin's practice. Annexed
5 hereto as "Exhibit A" is a "Summary Fee Application" breaking down the services rendered
6 by the project categories indicated along with a total amount for the services rendered during
7 the Second Interim Period. Annexed hereto as Exhibit "B" are computer summaries of the
8 actual daily time records for the Second Interim Period. Annexed hereto as "Exhibit C" is a
9 schedule of the hourly rate of each attorney and legal assistant and the resulting fees billed
10 in this case, followed by a breakdown by category of the hours spent in this case during the
11 Second Interim Period for which Kramer Levin seeks compensation.
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14 10. Kramer Levin also maintains records of all actual and necessary out-of-pocket
15 expenses incurred in connection with the rendition of its professional services. Annexed
16 hereto as Exhibit "D" is a schedule of disbursements indicating the form of disbursement
17 with total amount for each category and the total amount of all disbursements during the
18 Second Interim Period. Annexed hereto as Exhibit "E" is a schedule of voluntary
19 disbursement reductions indicating the forms of disbursement that Kramer Levin has
20 voluntarily written off. In order to save time and expense, all Committee meetings were
21 conducted by conference call, rather than in person. None of the travel expenses of Kramer
22 Levin attorneys included in this Interim Fee Application were for first-class airfare, luxury
23 accommodations or deluxe meals. In instances where Kramer Levin personnel may have
24 upgraded to first class or stayed in luxury accommodations, such charges were reduced to
25 normal rates.
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1 11. The following summary of the services rendered during the Second Interim Period is
2 not intended to be a detailed description of the work performed, as those day-to-day services
3 and the time expended in performing such services are fully set forth in Exhibit "B".

4 Rather, in compliance with The United States Trustee Guidelines for Reviewing
5 Applications for Compensation and Reimbursement of Expenses filed Under 11 U.S.C. §
6 330, the following summary is merely an attempt to highlight certain of the areas in which
7 services were rendered to the Committee, as well as to identify some of the problems and
8 issues to which Kramer Levin was required to direct its attention.

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10 **A. Plan of Reorganization and Disclosure Statement - Category 00013**

11 12. As this Court is aware, on the Petition Date, the Debtors filed a "draft" plan of
12 reorganization, the terms of which were modified prior to confirmation pursuant to
13 negotiations with the Committee. However, even after all of the major creditor
14 constituencies reached agreement on the Plan terms, MCG PCS, Inc. ("MCG") continued to
15 attempt to undermine and delay consummation of the Plan at every turn. During the Second
16 Interim Fee Period, Kramer Levin spent a substantial amount of time effort, analysis and
17 diligence pursuing confirmation of the Plan, and performed the following essential
18 functions, among others:
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- 21 • **Preparation for and Participation In Confirmation Hearing --**
22 Kramer Levin actively participated in all aspects of the confirmation hearing
23 and argued at the closing arguments in connection therewith. During
24 countless pre- and post-hearing conferences with the Debtors and the
25 informal vendor debt committee, Kramer Levin prepared witnesses, prepared
26 arguments, reviewed discovery, and coordinated trial strategy to ensure that
27 confirmation could take place as expeditiously as possible and avoid
28 duplication of effort and cost. Moreover, a Kramer Levin senior partner
testified at length during the confirmation hearing regarding the efficacy of
the settlement embodied in the Plan and the investigative process and legal
due diligence undertaken by the ad hoc prepetition noteholder committee.
Among other things, this testimony was essential to evidence the fact the

1 settlement embodied in the Plan was in the best interests of Leap's estate in
2 that it avoided the costs and delays of protracted litigation with an uncertain
3 outcome in exchange for a certain and expedient meaningful distribution. As
4 the confirmation hearing progressed, Kramer Levin provided Committee
5 members with contemporaneous periodic updates.

6 • **Technical Modifications to Plan** -- During the Second Interim Fee
7 Period, Kramer Levin negotiated various technical modifications to the Plan
8 and the documents contained in the voluminous Plan Supplement. Among
9 other things, these modifications dealt with issues surrounding GLH's alleged
10 deficiency claim against Leap, the claims of various vendor debt creditors,
11 and amendments to the Leap Creditor Trust regarding distribution issues.
12 These amendments were important to ensure that Leap's cash would be
13 transferred to Leap's creditors in a fair, equitable and expeditious manner.
14 Kramer Levin also reviewed, negotiated and commented on the terms of the
15 confirmation order and the proposed findings of fact and conclusions of law.

16 • **Response To MCG Stay Pending Appeal and Other Issues**
17 **Related to MCG Appeal** -- After its unsuccessful challenge to confirmation,
18 MCG sought an order staying implementation of the confirmation order
19 pending its appeal. A stay could have delayed distributions to creditors
20 indefinitely. Accordingly, Kramer Levin researched governing legal
21 authority and prepared and filed a detailed memorandum of law in opposition
22 to MCG's motion for a stay pending appeal, and successfully argued its case
23 on the merits to this Court. In addition, as the appeal was pending, Kramer
24 Levin actively monitored the appeal process (including the various
25 designations of record filed with the appellate court) and discussed strategy
26 with the Debtors and the informal vendor debt committee in connection
27 therewith.

28 • **Settlement of Issues With MCG** -- Given the tenacity evidenced by
MCG throughout these proceedings and the consistent attacks made by MCG
against the Plan, it was clear to the Debtors and each of the major creditor
constituencies that MCG would not stop litigating against the Debtors merely
because the Plan had been confirmed. Rather, it appeared likely that MCG
would continue to seek to delay the Effective Date of the Plan at all costs.
Accordingly, Kramer Levin played an instrumental role in negotiating and
documenting a complex global settlement agreement among MCG, the
Debtors, the informal vendor debt committee and the Official Committee
pursuant to which (i) Cricket [not Leap] agreed to pay 90% of MCG's legal
fees (capped at \$750,000); (ii) Leap waived its preference claim against
MCG; (iii) MCG withdrew a \$35 million claim against Leap; (iv) MCG
obtained the right to receive warrants to purchase 1% of stock in Reorganized
Leap; (v) Cricket [not Leap] agreed to pay the entire UBS Transaction Fee;
and (vi) Leap agreed to transfer \$990,000 to the Leap Creditor Trust to pay
for Leap's portion of the UBS Transaction Fee previously held back from the
Trust. In negotiating this global settlement, not only did Kramer Levin
reduce the litigation costs associated with pursuing the appeal and the
challenge to MCG's claims, but it ensured that Leap's estate would not be
liable for the success fee of the Debtor's financial advisor, an issue which had
been the subject of an ongoing dispute since the Petition Date.

- **Warrant Agreement With MCG** -- In connection with the MCG Settlement, and to ensure that the interests of Leap's creditors (who are to receive 3.5% of the reorganized debtors' stock pursuant to the Plan) were not inequitably diluted by MCG's warrant distribution, Kramer Levin negotiated and commented on the warrant agreement and other documents related to the MCG settlement agreement.

13. During the Second Interim Fee Period, Kramer Levin expended 431.40 hours on this category incurring aggregate fees of \$208,722.00.

B. Motions - Category 00011

14. During the Second Interim Period, Kramer Levin closely monitored all motions, stipulations and briefs filed in these case and prepared for and attended hearings as well as pre- and post-hearing conferences and discussions. All important motions were thoroughly discussed with the Committee, and often, Kramer Levin provided detailed written summaries (analyzing the factual and legal issues presented) of such motions. Set forth below are some of the more noteworthy motions which required substantial review and/or input from or by Kramer Levin during the Second Interim Fee Period:

- **Motions Related to Plan and Disclosure Statement**-- As more fully described above, the Committee took an active role in prosecuting confirmation of the Plan and filed pleadings and legal briefs where appropriate (including pleadings supporting confirmation and challenging MCG's motion for a stay pending its appeal). Kramer Levin expended time reviewing and commenting on the numerous plan-related orders and stipulations (including the confirmation order, the proposed findings of fact and conclusions of law) as well as various motions and stipulations regarding technical modifications to the Plan.
- **Motions to Assume and Reject Contracts** -- Kramer Levin spent time reviewing all motions to assume or reject contracts in order to ensure that the costs associated with assumption or rejection of such contracts would not unduly burden Leap's estate or its creditors.
- **Motion for Relief from Stay** Kramer Levin spent time reviewing a motion for relief from stay brought by certain of Leap's officers and directors regarding their right to access Leap's D&O insurance policy. After being provided with Kramer Levin's legal analysis of the issues presented, the Committee recommended that Kramer Levin not object to the Motion.

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- **Endesa Motion to Dismiss / Relief from Stay** -- As described more fully below, Kramer Levin spent time researching and arguing against Endesa's motion for an order dismissing the Endesa litigation. Given the fact that the Endesa note is one of the largest remaining estate assets, the expenditure of significant effort by Kramer Levin was warranted and appropriate in connection with this issue.

15. During the Second Interim Fee Period, Kramer Levin expended 14.0 hours on this category incurring aggregate fees of \$3,907.00.

C. Endesa Litigation

16. Subsequent to confirmation of the Plan, one of the largest remaining estate assets was the \$35 million Endesa note receivable. Although this important asset will not technically be transferred to the Trust until the Effective Date of the Plan, during the Second Interim Fee Period, Kramer Levin took an active role in pursuing the litigation surrounding the Endesa Note. In connection therewith, Kramer Levin:

- Reviewed and analyzed Endesa's motion to dismiss the adversary proceeding against it, prepared for and argued against Endesa's motion at a December 18th hearing, performed applicable legal research and began drafting a response to Endesa's motion;
- Held numerous strategy conferences with Debtor's U.S. and Chilean based counsel regarding the litigation, developed a work plan for pursuing the litigation in an expedited manner, and reviewed and commented on the expert report prepared by Leap's expert on Chilean law regarding the validity of the Endesa/Inversiones merger; and
- Continued to review and analyze the numerous and voluminous pleadings and exhibits filed by Endesa in support of its motion to dismiss or for the Court to abstain, and reviewed underlying substantive documents regarding the Endesa litigation in Chile; and provided Committee members with periodic updates of the litigation and possible litigation strategies.

17. During the Second Interim Fee Period, Kramer Levin expended 185.80 hours on this category incurring aggregate fees of \$86,623.50.

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2 **D. Asset Analysis (Category 00003); Claims Administration and Objections,**
3 **(Category 00005), and Other Claims Issues (Category 00014)**

4 18. The Leap bankruptcy case was jointly-administered with those of dozens of Leap's
5 affiliated debtors. Although these affiliated Debtors had intertwined business and
6 employees, the bankruptcy cases were not substantively consolidated. With the assistance
7 of the Committee's financial advisor and the Debtor, Kramer Levin endeavored to, among
8 other things, maximize recovery on Leap's assets. In this regard, it was also necessary for
9 the Committee to monitor Leap's ongoing expenditures and, where appropriate, suggest
10 methods to preserve cash. Kramer Levin performed the following tasks, among others,
11 during the Second Interim Fee Period in connection with the above-referenced billing
12 categories.

- 13 • **FCC License Transfer Issues** -- Pursuant to the terms of the Plan, Leap
14 will transfer seven licenses to the Leap Liquidating Trust upon the
15 occurrence of the Plan Effective Date. To facilitate this transfer, Kramer
16 Levin reviewed and commented on the license transfer application filed
17 with the FCC and spent time attending to various 'build-out'
18 requirements related to these licenses. In addition, Kramer Levin
19 negotiated and drafted certain technical amendments to the Leap
20 Liquidating Trust Agreement to ensure that the Trust would be able to
21 obtain clear title to the applicable licenses in the most expeditious manner
22 possible upon the Effective Date of the Plan.
- 23 • **Zawalick Cause of Action**-- Kramer Levin actively monitored the New
24 York state court Zawalick cause of action that was to be transferred to the
25 Leap Liquidating Trust on the Effective Date of the plan. In connection
26 therewith, Kramer Levin negotiated a common interest privilege
27 agreement with the Debtor and performed in-depth legal and factual
28 research into the viability of the cause of action and the potential recovery
thereon. Kramer Levin submitted a letter on behalf of the Committee to
the presiding state court judge regarding the Committee's objection to a
proposed dismissal of the state court lawsuit. Ultimately, the state court
lawsuit was dismissed, but without prejudice to the right of the
Committee or the Liquidating Trust to bring a similar suit on behalf of the
Leap's estate.
- **Budget Negotiations and Cash Transfer to Trust** -- The Plan obligated
Leap to transfer substantially all of its cash to the Leap Liquidating Trust
on the Initial Distribution Date, less a reserve to fund (i) administrative
and secured claims and (ii) Leap's operations through the Effective Date.

1 Subsequent to the confirmation date, and with the assistance of its
2 financial advisor, Kramer Levin reviewed the Debtor's proposed budget
3 and negotiated for the highest possible cash distribution to the Leap
4 Liquidating Trust. In connection therewith, it was necessary to review
5 and evaluate numerous claims against Leap's estate to determine the need
6 to reserve for them at the Leap level.

- 7 • **Leap Wind Down Budget:** Kramer Levin Researched and reviewed the
8 allocation of expenses to be allocated to Leap in the wind down of the
9 Leap's estate and examined whether such expenses were properly
10 allocated against other debtor entities, and where appropriate, argued for
11 different allocations.
- 12 • **Claims Negotiation and Reconciliation** During the Second Interim Fee
13 Period, Kramer Levin reviewed the Debtors' claim register and analyzed
14 numerous claims against Leap, in preparation for the first omnibus
15 objection to claims. Moreover, Kramer Levin identified certain disputed
16 claims against which the Debtors indicated it had not and did not intend
17 to file objections, and reviewed the allowability of these claims and
18 performed legal research in connection therewith. Kramer Levin also
19 began discussions with numerous of these claimholders regarding a
20 consensual resolution of their claims. 502(e) equitable subordination
21 issues.
- 22 • **GLH Settlement** Subsequent to the confirmation date, issues remained
23 outstanding regarding GLH's secured claim. In this regard, Kramer
24 Levin reviewed and commented on a proposed settlement with GLH that
25 had been negotiated with the Debtor to ensure that the proposed sale
26 and/or foreclosure process would minimize GLH's unsecured deficiency
27 claim (if any) against Leap's estate.

17 19. During the Second Interim Fee Period, Kramer Levin expended 194.2 hours on this
18 category incurring aggregate fees of \$88,906.20.

19 **E. Fee Applications - Category 00008**

20 20. At the outset of these cases, this Court entered the Compensation Order pursuant to
21 which estate professionals were authorized to file fee applications and seek reimbursement
22 from the estate. During the Second Interim Fee Period, Kramer Levin spent time and
23 resources in connection with this matter, including, among other things:

- 24 • Reviewing the U.S. Trustee's guidelines with respect to Fee
25 Applications and reviewing time and expense detail to ensure that
26 Kramer Levin's fees and expenses were in accordance with such
27 requirements;

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- Preparing, filing and prosecuting Kramer Levin's First Interim Fee Application and attending the hearing in connection therewith;
- Reviewing the First Interim Fee Applications and monthly bills submitted by estate professionals in order to determine whether an objection on behalf of the Committee was warranted and providing a written update to the Committee regarding the professional fees incurred by the estate during the First Interim Fee Period; and
- Preparing a response to the First Interim Fee Applications of UBS Warburg and PWC Advisors pursuant to which the Committee reserved the right to challenge the allocation of the fees incurred by such professionals among the Debtor's estates.

21. During the Second Interim Fee Period, Kramer Levin expended 69.7 hours on this category incurring aggregate fees of \$28,769.50.

F. Case Administration (Category 00002) and Committee Meetings (Category 00015)

22. During the Interim Fee Period, Kramer Levin expended a substantial amount of time and effort keeping abreast of the flow of information, schedules, motions and other pleadings filed in the Debtors' bankruptcy cases. In that regard, Kramer Levin performed the following tasks, among others:

- Participated in numerous telephone conferences with the Committee, Committee members, and creditors regarding status of these bankruptcy cases;
- Reviewed and organized incoming pleadings in the cases;
- Coordinated mailings to the Committee;
- Distributed numerous pleadings and correspondence generated in these cases, internally and to the Committee;
- Coordinated conferences with Committee members and professionals;
- Reviewed all public filings; and
- Continuously updated files in connection with monitoring the docket and bankruptcy cases of the Debtors.
- Participated in numerous Committee meetings where Kramer Levin updated Committee members and answered any questions that

1 Committee members had in connection with the cases. In order to
2 save time and expense (and because Committee members were
3 located all over the country), all Committee meetings were conducted
4 by conference call, rather than in person. Moreover, Kramer Levin
5 had countless calls with individual Committee members regarding
6 issues that arose almost daily in the case.

7 23. In performing the above tasks, Kramer Levin utilized paraprofessionals whenever
8 possible to perform administrative non-legal tasks. Given the unusually large volume of
9 documents filed and circulated in the cases and the extensive number of parties who receive
10 mailings and are involved in this case, Kramer Levin required significant paralegal
11 assistance, much of which is applicable to case administration. These paraprofessional fees
12 are incurred directly in connection with the administration of the case and are necessary and
13 appropriate to deal with the volume of documents involved in this case.

14 24. During the Second Interim Fee Period, Kramer Levin expended 45.9 hours on this
15 category incurring aggregate fees of \$12,673.00.

16 THE COMPENSATION AND REIMBURSEMENT SHOULD BE ALLOWED

17 25. Section 331 of the Bankruptcy Code provides for interim compensation of
18 professionals and incorporates the substantive standards of section 330 to govern the Court's
19 award of such compensation. 11 U.S.C. § 331. Section 330 provides that a court may
20 award a professional employed under section 327 of the Bankruptcy Code "reasonable
21 compensation for actual necessary services rendered . . . and reimbursement for actual,
22 necessary expenses." 11 U.S.C. § 330(a)(1). Section 330 also sets forth the criteria for the
23 award of such compensation and reimbursement:

24 In determining the amount of reasonable compensation to be
25 awarded, the court should consider the nature, extent, and the
26 value of such services, taking into account all relevant factors,
27 including —

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- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration , or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed with in a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title. U.S.C. § 330(a)(3)

26. In the instant case, Kramer Levin respectfully submits that the services for which it seeks compensation in this Application were necessary and beneficial for maximizing the value of the Leap estate. Kramer Levin further submits that the compensation requested herein is reasonable in light of the nature, extent, and value of such services to the Committee and Leap’s estate, and all parties in interest and should be allowed in all respects. In sum, Kramer Levin respectfully submits that the services it rendered were necessary and beneficial to the Leap estate and were consistently performed in an efficient and timely manner commensurate with the complexity, importance, and nature of the issues involved.

27. Kramer Levin seeks reimbursement for \$39,184.20 of disbursements made and expenses incurred in providing professional services to the Committee that were posted during the Second Interim Fee Period. This sum reflects a discretionary and voluntary write-off of \$2,154.50. In connection therewith, Kramer Levin has voluntarily reduced its charges to \$.15 per page for photocopies, and \$1.00 per page (plus applicable toll charges) for facsimile transmissions. The disbursement charges included in this Application are

1 intended to cover Kramer Levin's direct operating costs; provided, that the disbursements
2 reflected for certain computer aided legal research represent the hourly or transactional
3 charges billed to Kramer Levin by such service providers even though Kramer Levin
4 actually pays such providers a flat monthly rate for the provision of such services. Kramer
5 Levin's regular practice is not to include such charges in overhead when establishing billing
6 rates and to charge its clients for these and all other out-of-pocket disbursements incurred
7 during the regular course of rendering services. Only clients who actually use these services
8 are separately charged for such services; the effect of including such expenses as part of the
9 hourly billing rates would impose that cost upon clients who do not require such facilities
10 and services. In addition, although it is typical for New York firms to charge clients for late
11 night meals and car service, Kramer Levin has not sought reimbursement for such charges in
12 these cases.
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15 28. None of the travel expenses of Kramer Levin included herein were for first-class
16 airfare, luxury accommodations or deluxe meals. Kramer Levin has made every effort to
17 minimize disbursements in these cases. In instances where professionals utilized first class
18 travel, the amount billed to the estate was reduced to non-refundable coach fare rates and the
19 balance was written-off. The actual expenses incurred in providing professional services
20 were necessary, reasonable and justified under the circumstances to serve the needs of the
21 Committee, the Debtors, their estates and creditors.
22

23 29. As set forth in the Notice of Fee Hearing, copies of this Application have been given
24 to (i) counsel to the Debtors and (ii) the Office of the United States Trustee. In addition,
25 notice of this Interim Fee Application has been served in compliance with Rule 2016 of the
26 Local Rules of the United States Bankruptcy Court, Southern District of California.
27

STATEMENTS BY KRAMER LEVIN

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2 30. Except as provided herein or in the cover page to this Application, Kramer Levin has
3 not yet received any payments from the Debtors. No agreement or understanding exists
4 between Kramer Levin and any other person for a sharing of compensation received or to be
5 received for services rendered in or in connection with these chapter 11 cases, nor shall
6 Kramer Levin share or agree to share the compensation paid or allowed from the Debtors'
7 estates for such services with any other person. No agreement or understanding prohibited
8 by 18 U.S.C. § 155 has been or will be made by Kramer Levin.

9
10 31. Kramer Levin's charge for professional services rendered in these cases are billed in
11 accordance with Kramer Levin's existing billing procedures. The rates that Kramer Levin
12 charges for the services rendered by its professionals and paraprofessionals in these chapter
13 11 cases are the same rates Kramer Levin charges for professional and paraprofessional
14 services rendered in comparable non-bankruptcy related matters and are reasonable based on
15 customary compensation charged by comparably skilled practitioners in comparable non-
16 bankruptcy cases in a competitive national legal market. As set forth above, in an exercise
17 of billing discretion, Kramer Levin has voluntarily written off \$13,982.00 in fees and
18 \$2,154.50 in expenses incurred during the Second Interim Fee Period.
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CONCLUSION

WHEREFORE, Kramer Levin respectfully requests allowance of compensation for professional services rendered to the Committee during the period from October 1, 2003 through and including January 31, 2004 in the amount of \$429,605.50, and the reimbursement of Kramer Levin's out-of-pocket expenses incurred in connection the rendering of such services in the amount of \$38,769.18; and requests an order (i) authorizing and directing Leap to pay, as interim compensation to Kramer Levin, such amounts and (ii) granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
April 6, 2004

KRAMER LEVIN NAFTALIS & FRANKEL LLP

/s/ Robert T. Schmidt

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