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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:
9 NUTRACEA, a California corporation,
10
11 Debtor.

Chapter 11

2:09-bk-28817-CGC

**QUALIFIED OBJECTION TO THE
UNSECURED CREDITORS
COMMITTEE'S APPLICATION
TO EMPLOY FTI CONSULTING
AS FINANCIAL ADVISOR**

14 Debtor respectfully objects to the Application to Employ FTI Consulting Inc. as
15 Financial Advisor to the Unsecured Creditors Committee (the "**Application**"), unless the
16 terms are modified to delete Debtor's purported indemnification of FTI from the
17 consequences of its own negligence. Debtor was never consulted about providing such
18 an indemnification, does not agree to it, and cannot legally be compelled to accept it.

19 Paragraph 16 of the Application reads as follows:

20 In addition to the foregoing, and as a material part of the consideration for
21 the agreement of FTI to furnish services to the Committee pursuant to the terms of
22 this Application, FTI requests that the following indemnification provisions be
approved:

- 23 a. Subject to the provisions of subparagraphs (b) and (c) below, the
24 Debtors [*sic*] are authorized to indemnify, and shall indemnify, FTI for any
25 claims arising from, related to, or in connection with FTI's engagement; and

1 b. The Debtors [sic] shall have no obligation to indemnify FTI for any
2 claim or expense that is either (i) judicially determined (the determination
3 having become final) to have arisen primarily from FTI's bad faith, gross
4 negligence, or willful misconduct, or (ii) settled prior to a judicial
5 determination as to FTI's bad faith, gross negligence, or willful misconduct,
6 but determined by this Court, after notice and a hearing pursuant to
7 subparagraph (c) infra, to be a claim or expense for which FTI is not
8 entitled to receive indemnity under the terms of the Application; and

9 c. If, before the earlier of (i) the entry of an order confirming a chapter
10 11 plan in these cases [sic] (that order having become a final order no
11 longer subject to appeal), and (ii) the entry of an order closing these chapter
12 13 cases [sic], FTI believes that it is entitled to the payment of any amounts
14 by the Debtors on account of the Debtors' indemnification obligations under
15 the Application, including, without limitation, the advancement of defense
16 costs, FTI must file an application therefor in this Court, and the Debtors
17 may not pay any such amounts to FTI before the entry of an order by this
18 Court approving the payment. This subparagraph (c) is intended only to
19 specify the period of time under which the Court shall have jurisdiction
20 over any request for fees and expenses by FTI for indemnification, and not
21 as a provision limiting the duration of the Debtors' obligation to indemnify
22 FTI.

23 In other words, by virtue of the Committee's engagement agreement with FTI,
24 which has not been filed with the Court, the Debtor will have an open-ended obligation
25 to indemnify FTI from claims arising from confidential advice given to the Committee.
This obligation will exist even though the Debtor will receive no benefit from the advice
and, presumably, will not even be aware of it.

 The Committee has offered no legal support for its request. The lone precedent
cited in the Application, *In re United Artists Theatre Co.*, 315 F.3d 217, 233-34 (3rd Cir.
2003), is not on point. *United Artists* dealt with an indemnification agreement between
the debtor and its financial advisors. That is a completely different circumstance. In
dealing with its own financial advisors, the debtor is able to evaluate the advice given,
the nature and extent of the research and analysis underlying it, and whether and how to
act on it. In doing so, its own informed business judgment comes into play. In contrast,

1 under the arrangement proposed by the Committee, Debtor will have no ability to
2 evaluate the advice and will have no opportunity to exercise its business judgment.
3 Instead, it will be compelled to blindly indemnify a professional for claims arising from
4 its relationship with another.

5 The idea that the Debtor could be compelled to provide such an indemnification in
6 this case is particularly galling. Debtor tried to dissuade the Committee from retaining a
7 financial advisor because of the potentially huge costs involved, and initially intended to
8 oppose the Application. However, upon receiving assurances from the Committee that
9 the scope of FTI's engagement would be narrow and the total fees incurred would be
10 between \$42,000 and \$96,000, Debtor determined not to oppose it.¹ Debtor's decision
11 was motivated, in part, by its respect for the Committee's prerogative to act
12 independently and to retain its own professionals, subject to the requirements of the Code
13 and Rules. During these discussions, however, no mention was made of a forced
14 indemnification provision.

15 **Conclusion.** For all the reasons set forth above, and because the Committee has
16 offered no legal support or other justification for compelling Debtor to indemnify the
17 Committee's professionals, Debtor requests that the court decline to approve FTI's
18 engagement by the Committee unless the indemnification provisions referred to above
19 are stricken.

20 DATED this 26th day of March, 2010.

21 FORRESTER & WORTH, PLLC

22 /s/ SCF (006342)

23 S. Cary Forrester

24 Attorneys for the Debtor

25 ¹ Debtor reserves the right to raise its objections should circumstances change or the assurances provided by the Committee prove to have been misleading.

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Copy mailed or emailed this 26th day of March, 2010 to all those on Official Notice Service List #2 on file with this court.

/s/ Carrie Lawrence
Carrie Lawrence

File an Answer/Response/Objection to a Motion:[2:09-bk-28817-CGC Nutracea, a California corporation](#)

Type: bk

Chapter: 11 v

Office: 2 (Phoenix)

Assets: y

Judge: CGC

U.S. Bankruptcy Court**District of Arizona**

Notice of Electronic Filing

The following transaction was received from S. CARY FORRESTER entered on 3/26/2010 at 10:49 AM AZ and filed on 3/26/2010

Case Name: Nutracea, a California corporation**Case Number:** [2:09-bk-28817-CGC](#)**Document Number:** [347](#)**Docket Text:**

Objection to Motion/Application *Qualified Objection to the Unsecured Creditors Committee's Application to Employ FTI Consulting as Financial Advisor* (related to motions(s)[344]) filed by S. CARY FORRESTER of FORRESTER & WORTH, PLLC on behalf of Nutracea, a California corporation. (FORRESTER, S.)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**C:\fakepath\Objection to App to Employ FTI.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=875559564 [Date=3/26/2010] [FileNumber=17172479-0]
] [8e6a516b3923f76c420cff7a4e3a85ef2adb9aea6381bc5c19225c647f0b06f93a
f233f2aab8cb0ec83fc05f9e761a25df84fb546469163f1d8261e95430589]]

2:09-bk-28817-CGC Notice will be electronically mailed to:

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