

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**October 3, 2024 at 10:30 a.m.**

1. [24-23923](#)-E-12  
[DMW](#)-2

**KENNETH/MARY DEAVER**  
**Martha Warriner**

**CONTINUED MOTION PROHIBITING  
UTILITY PROVIDERS FROM  
ALTERING, REFUSING OR  
DISCONTINUING SERVICE AND/OR  
MOTION DEEMING UTILITIES  
ADEQUATELY ASSURED OF FUTURE  
PERFORMANCE , MOTION  
ESTABLISHING PROCEDURES FOR  
RESOLVING REQUESTS FOR  
ADDITIONAL ADEQUATE PROTECTION  
9-5-24 [[24](#)]**

Item 1 thru 3

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, other parties in interest, and Office of the United States Trustee on September 6, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

The Motion for Order Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion for Order Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection is granted.**

**October 3, 2024 Hearing**

The court continued the hearing on this Motion having granted the Motion an interim basis. The court set the date of September 24, 2024 for any oppositions to be filed. Order, Docket 51. A review of the Docket on September 26, 2024 reveals nothing new has been filed with the court under this docket control number.

At the hearing, **XXXXXXX**

**REVIEW OF THE MOTION**

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an order for the following:

- A. Prohibiting PG&E from altering, refusing or discontinuing service to Debtors or requiring additional adequate assurance of payment as condition to provide utility services;
- B. Deeming the utility providers to be adequately assured of future payment by the Debtors pursuant to. 11 U.S.C. §§ 366 and 105, and;
- C. Establishing procedures for resolving a request by any utility provider for additional assurance of payment.

Mot. 2:18-23, Docket 24. Debtor in Possession proposes an adequate assurance payment equaling an average month of Debtor in Possession’s utility usage. Debtor in Possession provides the following table of what an average month can expect in utility usage:

Account Number	Account Holder	Services for (Entity)	Average Monthly Usage
4732287590-8	Ken Deaver	Individuals	\$1.400.00
4690620926-0	Kenneth Deaver	Individuals (Flower Farm)	\$600.00
5753248104-1	Ken Deaver	Vineyards	\$500.00
6773953083-9	Ken Deaver	Vineyards	\$250.00
5211581472-6	Ken Deaver	Ranch	\$180.00

6433973171-2	Mary Jean Deaver	Ranch	\$480.00
5253248136-4	Mary Jean Deaver	Ranch	\$550.00
2345806410-2	Ken Deaver	Ranch	\$100.00
3814618896-3	Ken Deaver	Ranch	\$500.00
5169914808-9	Ken Deaver	Individuals (Flower Farm)	\$580.00
4148952208-0	Ken Deaver	Ranch	\$50.00
4190618872-1	Ken Deaver	Ranch	\$580.00
6482286435-7	Ken Deaver	Vineyards	\$90.00
4190618872-1	Ken Deaver	Ranch	\$580.00
<b>TOTAL:</b>			<b>\$6,440.00</b>

Mot. 4:8-20, Docket 24.

Debtor in Possession explains the various entities on the farm all receive utility services under Debtor in Possession's names. Debtor in Possession must have electricity service at their various locations. Should PG&E refuse or discontinue service, even for a brief period, Debtor in Possession's ability to continue their farming operations would be interrupted. Debtor in Possession's need for uninterrupted utility service is critical in this case. *Id.* at 4:24-5:3. Debtor in Possession's proposed adequate assurance payment is in an amount not to exceed \$3,000. *Id.* at 10:11.

Debtor in Possession proposes the following procedures for accommodating requests for adequate assurances, should PG&E request additional adequate assurance of future payment:

1. Debtor in Possession shall serve a copy of the order approving the relief requested herein upon PG&E by United States First Class mail within five business days after the date of entry of the order and as described below, each utility provider that is listed on any subsequently filed Supplement to this Motion by United States First Class Mail within five business days after the date of filing of the supplement;
2. If a PG&E (or any subsequent utility provider) is not satisfied with the assurance of future payment provided by the Debtor in Possession, the utility provider must serve a written request upon the Debtor in Possession setting forth the locations for which utility services are provided, the account numbers for such locations, the outstanding balance for each account, a summary of the Debtor in Possession's payment history on each account, and an explanation of why the proposed adequate assurance is inadequate assurance of payment.
3. The request must be received by Debtor in Possession's counsel at the following addresses within 45 days of the date of the order.

Andy C. Warshaw  
DiMarco Warshaw, APLC  
P. O. Box 704  
San Clemente, CA 92674  
Email: andy@dimarcowarshaw.com

4. Without further order of the Court, the Debtor in Possession may enter into agreements granting additional adequate assurance to a utility provider serving a timely request if the Debtor in Possession, in their discretion, determine that the request is reasonable.
5. If Debtor in Possession believes that a request is unreasonable, then they shall, within 30 days after the request deadline date, file a motion pursuant to 11 U.S.C. § 366(c)(3) of the Bankruptcy Code seeking a determination from the Court that the utility deposit, plus any additional consideration offered by Debtor in Possession, constitutes adequate assurance of payment.
6. Pending notice and a hearing on the determination motion, the utility provider that is the subject of the unresolved request may not alter, refuse or discontinue services to Debtor in Possession or recover or set off against a pre-petition deposit.
7. Any utility provider that fails to make a timely request shall be deemed to be satisfied that the proposed adequate assurance provides adequate assurance of payment to such utility provider within the meaning of 11 U.S.C. § 366 and shall further be deemed to have waived any right to seek additional adequate assurance during the course of this Chapter 12 case, except as provided in 11 U.S.C. §§ 366(b)(2) or 366(c)(3), as applicable.
8. If an entity that is not identified in this Motion as a utility provider believes that it provides Debtor in Possession with utility services within the meaning of 11 U.S.C. § 366, then that entity must make a written request to be added as a utility provider within 20 days of the date of the court's order granting the relief requested herein. Failure to make a written request within the 20-day period bars such entity from terminating the services it provides to Debtor in Possession. Under 11 U.S.C. § 366, absent further order of the court.

Mot. 5:24-7:13, Docket 24.

Debtor in Possession further requests that they be allowed, without further order of the court, to supplement the list if any utility provider has been inadvertently omitted from this Motion. If Debtor in Possession determines that the list of utility providers should be supplemented, Debtor in Possession will, as soon as practicable, file a notice with the Court amending their list of utility providers.

Debtor Kenneth Deaver submits his own Declaration in support. Docket 26. Mr. Deaver explains the nature of the businesses he and his wife operate, including the operations of the Deaver Ranch, Inc. ("Ranch"), and the Shenandoah Investment Properties, Inc., d/b/a Deaver Vineyards ("Vineyards"), as

well as the Amador Flower Farm, a sole proprietorship, on 20-acres of their 88- acre ranch. *Id.* at ¶¶ 4-5. Mr. Deaver states:

As an integrated operation, I own the land, the grapes are grown and sold by the Ranch, and the wine is made, distributed and sold by the Vineyards. A similar pattern has been followed with respect to utility service, with all accounts held in my name, or my wife’s name. Separate accounts were set up for services to each of the various operations and accounting entries were made in our books and records, although the bills were paid by my wife and me.

*Id.* at ¶ 7.

## DISCUSSION

11 U.S.C. § 366 provides:

(a) Except as provided in subsections (b) and (c) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.

(c)

(1)

(A) For purposes of this subsection, the term “assurance of payment” means—

(i) a cash deposit;

(ii) a letter of credit;

(iii) a certificate of deposit;

(iv) a surety bond;

(v) a prepayment of utility consumption; or

(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

The court finds that a cash deposit for an average month of utility usage is a reasonable form of adequate assurance in this case, pursuant to 11 U.S.C. § 366(c)(1)(A)(i). However, the amount proposed is not more than \$3,000, while the chart depicts an average monthly use of \$6,440 for the entire integrated operation. It may be that this Motion only seeks the desired relief as to only the utility bills Debtors Ken and Mary Deaver pay on behalf of themselves in their individual capacity. Such a monthly usage amounts to \$2,580, which is within the proposed payment of \$3,000.

Debtor in Possession states that they and “their two related entities will also seek authority to use the cash collateral of their various secured creditors, as appropriate. For the purposes of that motion, for post-petition utility services, each entity has budgeted for its own utility usage.” Mot. 5:4-6, Docket 24. Although the related entities will be paying their own utilities with court authorized use of cash collateral, it does not appear that the Ranch and Vineyard are filing their own 11 U.S.C. § 366 Motions.

The court further finds the proposed procedures for accommodating requests for adequate assurances, should PG&E request additional adequate assurance of future payment, are fair and reasonable.

The Motion is granted on an interim basis.

The final hearing on this Motion shall be conducted at 10:30 a.m. on October 3, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before three days after the entry of the order granting this relief. Oppositions, if any, shall be filed and served on or before September 24, 2024, and Replies presented orally at the hearing.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Order Prohibiting Utility Providers from Altering, Refusing, or Discontinue Services; Deeming Utilities Adequately Assured; and Establishing Procedures for Resolving Requests for Additional Adequate Protection filed by Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the utility provider PG&E is prohibited from altering, refusing or discontinuing service to Debtor/Debtor in Possession, the court finding the payment of \$3,000 to constitute reasonable adequate assurance pursuant to 11 U.S.C. § 366(b).

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, other parties in interest, and Office of the United States Trustee on September 6, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

The Motion for Order Authorizing Maintenance of Prepetition Accounts was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion for Order Authorizing Maintenance of Prepetition Accounts for the Purpose of Accepting Electronic Deposits is granted.**

### October 3, 2024 Hearing

The court continued the hearing on this Motion having granted the Motion an interim basis. The court set the date of September 24, 2024 for any oppositions to be filed. Order, Docket 50. A review of the Docket on September 26, 2024 reveals nothing new has been filed with the court under this docket control number.

At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an order authorizing Debtor in Possession to maintain prepetition accounts for the sole purpose of accepting electronic deposits. Debtor in Possession states in their Motion:

1. Debtor in Possession does business as Amador Flower Farm (“Amador”). Debtor in Possession receives credit card payments for flowers, plants and other goods sold by Amador. These payments are deposited into a checking account at Bank of Marin, account number xxxx978 (“Bank Account”). Mot. 2:12-15, Docket 21.
2. The task of redirecting payments to a new bank account would be time-consuming and, to the extent that the Debtor in Possession must close the Bank Account, there is a risk that payments will not be received. The monies electronically deposited into the Bank Account represent 100% of all payments made to the Debtor in Possession by their customers. Because of the nature of the Debtor in Possession collections, the disruption that would result if it were forced to immediately close the existing Bank Account could result in a significant amount of lost sales and funds potentially not being properly deposited and, thus, never received. *Id.* at 2:16-23.
3. There are no alternative means that the Debtor in Possession can employ to receive customer payments and not disrupt their operations. *Id.* at 2:23-24.
4. Debtor in Possession acknowledges the U.S. Trustee’s guidelines for this District require closing prepetition accounts in a Chapter 11 case and opening Debtor in Possession accounts, but, if applicable here, Debtor in Possession requests the court waive this requirement for the purpose of Debtor in Possession accepting electronic funds in the Bank Account. *Id.* at 3:6-16.

Debtor in Possession authenticates the facts alleged in the Motion in Debtor Kenneth Deaver’s Declaration in support. Docket 23. Debtor in Possession informs the court that they will sweep the Bank Account on a weekly basis and remove electronic deposits from the Bank Account and deposit them into designated Debtor in Possession accounts. *Id.* at ¶ 10. Mr. Deaver further testifies that are opening a Debtor in Possession account and will make all disbursements from the Debtor in Possession account. *Id.* at ¶ 11. Debtor in Possession will not make any disbursements from the Bank Account and will account for all funds received. *Id.* at ¶ 13.

## **DISCUSSION**

For Chapter 11 cases, Local Bankruptcy Rule 2015-2(a) states:

New Bank, Deposit, and Investment Accounts. For all moneys of the bankruptcy estate, immediately upon filing a chapter 11 petition, the debtor-in-possession shall close all bank, deposit, and investment accounts. The debtor-in-possession shall open and maintain a new general bank account in a federally insured depository. If the debtor has an ongoing business with employees, the debtor-in-possession shall similarly open and maintain a tax account, unless the Court deems it unnecessary. If the debtor maintained a separate payroll account immediately prior to filing, the debtor-in-possession shall similarly open and maintain a payroll account, unless the



Court deems it unnecessary. The signature cards for the new accounts shall clearly indicate that the debtor is the “debtor-in-possession.”

Likewise, the U. S. Department of Justice Office of the U.S. Trustee’s Chapter 11 Operating and Reporting Guidelines for Debtors in Possession state:

After filing the bankruptcy petition, the debtor must immediately close all existing bank accounts and open new accounts. Each account must be designated as a debtor in possession account (“DIP Account”).

Office of the U.S. Trustee, Chapter 11 Operating and Reporting Guidelines for Debtors in Possession at 2 (last visited August 21, 2024), <https://www.justice.gov/ust/ust-regions-r17/file/guidelines.pdf/dl>.

However, the court has not been presented with an analogous rule requiring a Chapter 12 Debtor in Possession to seek an order permitting use of prepetition bank accounts. Collier’s Treatise on Bankruptcy states:

The basic structure and conduct of a chapter 12 case is similar to that of a business chapter 13 case. The debtor in a chapter 12 case remains in possession and control of all of the debtor’s property and continues to operate the farm or fishing operation. A chapter 12 trustee is appointed in each case but the trustee does not become involved in operating the debtor’s farm or fishing operation unless the debtor is removed as a debtor in possession. Federal Rules of Bankruptcy Procedure regarding the automatic stay, use, sale, or lease of property, obtaining credit, executory contracts and unexpired leases, and the estate’s avoidance powers are all, with a few modifications, applicable in a chapter 12 case.

8 COLLIER ON BANKRUPTCY ¶ 1200.01[3][b]. There is similarly no analogous provision requiring a business Chapter 13 case to open Debtor in Possession Accounts.

The court notes that 11 U.S.C. § 1203 provides:

Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor’s farm or commercial fishing operation.

Such a provision would permit the court to enter the requested order as the Debtor in Possession here must perform the same functions and duties a trustee serving under Chapter 11 would, which includes opening a Debtor in Possession Account. To the extent that the requested order would prevent confusion and allow Debtor in Possession to continue receiving electronic funds without disruption, the Motion is granted on an interim basis through and including October 14, 2024.

The final hearing on this Motion shall be conducted at 10:30 a.m. on October 3, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall be filed and served on or before three days after the entry of the order granting this relief. Oppositions, if any, shall be filed and served on or before September 24, 2024, and Replies presented orally at the hearing.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Order Authorizing Maintenance of Prepetition Accounts filed by Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor/Debtor in Possession is authorized to continue using the prepetition bank account ending in 978 with Bank of Marin for the sole purpose of receiving electronic deposits through and including October 14, 2024.

3. [24-23923-E-12](#)      **KENNETH/MARY DEAVER**      **CONTINUED MOTION TO USE CASH**  
[DMW-4](#)      **Martha Warriner**      **COLLATERAL**  
9-8-24 [37]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, Chapter 12 Trustee, other parties in interest, and Office of the United States Trustee on September 9, 2024. The court set the Hearing on this Motion for September 12, 2024 at 10:30 a.m. Docket 27.

The Motion for Authority to Use Cash Collateral was set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Creditors, the Chapter 12 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

<b>The Motion for Authority to Use Cash Collateral is <span style="color: red;">XXXXXXX</span>.</b>
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**October 3, 2024 Hearing**

The court set the final hearing on this Motion for October 3, 2024, having granted the Motion on an interim basis. The court set the deadline of September 24, 2024 for parties in interest to file any oppositions. Order, Docket 54. On September 24, 2024, creditor AgWest Farm Credit, PCA (“AgWest”) filed a Response on September 24, 2024. Docket 55. AgWest states:

1. The parties are actively working on a consensual cash collateral stipulation to submit to the Court. AgWest hopes to submit the stipulation to the Court prior to the next hearing date. Resp. 2:8-9, Docket 55.
2. Flower Farm is and always has been a separate entity. Debtors, however, want to claim Flower Farm is a sole proprietorship so that they can have it fall under the auspices of this case, with its assets protected by the automatic stay, meanwhile stripping the cash of the entity to pay the Debtors’ personal expenses to the detriment of Flower Farm’s creditors. *Id.* at 2:15-19. Trying to modify the rights and obligation of the flower farm under this current case is improper.

AgWest submits the declaration of Darian Moreno in support of their Response. Docket 57. Mr. Moreno authenticates the attached Exhibits. The Exhibits submitted in support of the Response are three “Certificates of General Partnership to Borrow or Lease.” Exhibits. 1-3, Docket 56. These Exhibits show Debtor in Possession has represented Amador Flower Farm as a General Partnership, not a sole proprietorship.

Exhibit 1 is a Certificate dated September 17, 2020, and is signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. Dckt. 56 at 4-5. Exhibit 2 is a Certificate of Partnership dated March 23, 2022, that this signed by Ken Deaver and Mary Jean Deaver as the partners of the Amador Flower Farm partnership. *Id.* at 7-8. Exhibit 3 is a Certificate of Partnership dated October 16, 2023, that is signed by Ken Deaver and Mary Jean Deaver as partners of the Amador Flower Farm partnership. *Id.* at 17-18. The signatures are made using the DocuSign program.

On Schedule A/B Flower Farm is not listed as a partnership in which Debtor has an interest. Dckt. 1 at 16. Schedule A/B does list Amador Flower Farm as a sole proprietorship run by Debtor. *Id.* at 19. On the Statement of Financial Affairs, ¶ 27, Debtor states that Amador Flower Farm is a sole proprietorship that Debtor has operated from “1990 - current.” *Id.* at 58-59.

At the hearing, **XXXXXXX**

On September 24, 2024, Debtor in Possession submitted a Supplemental Pleading. Debtor in Possession states that they are in negotiations with AgWest for a cash collateral budget and believe they are close to an agreement. Docket 59.

At the hearing, **XXXXXXX**

## **REVIEW OF THE MOTION**

Chapter 12 Debtors and Debtors in Possession, Kenneth Deaver and Mary Jean Deaver (“Debtor in Possession”) move this court for an order approving the use of cash collateral generated from the following encumbered assets:

**REAL PROPERTY**

<b>Lienholder</b>	<b>Collateral/Real Property Address</b>	<b>Estimated Parcel Value</b>	<b>Loan Balance</b>	<b>Payment Terms</b>
<b>Prudential Bank &amp; Trust FSB</b>	a) 21643 Shenandoah School Road, Plymouth, CA 95669 Amador County (88 acres w/vineyards and residence)	\$2,000,000	\$4,256,115 (secured by multiple properties)	\$155,000 semi-annually
	b) 19940 Shenandoah School Road, Pleasant Grove, CA 95668 (41.87 acres w/vineyards and 2 modular homes)	\$1,050,000		
	c) 21424 Shenandoah School Road, Pleasant Grove, CA 95668 (108.3 acres w/vineyards, house, barn and pasture)	\$1,900,000		
	d) 19944 Shenandoah School Road, Plymouth, CA 95669 (40 acres w/vineyards and 6-8 acres of pasture)	\$875,000		
	e) 11850 Shenandoah Road, Plymouth, CA 95669 (raw land)	\$350,000		
<b>Stonetree</b>	17705 State Hwy. 49, Plymouth, CA 95669 (9.69 acres leased to Ace Hardware, StoreStorage Unit, and Shenandoah Vet Clinic); owned jointly with Gerry Ninnis, who is making payments and receiving rental income	\$3,250,000	\$2,500,000	
<b>Totals:</b>		\$9,425,000	\$6,756,115	

Decl. 5:8-25, Docket 39.

**PERSONAL PROPERTY**

<b>Lienholder</b>	<b>Priority</b>	<b>Collateral</b>	<b>Loan Balance</b>	<b>Debtors and Codebtors</b>
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<b>Prudential Insurance Company</b>	1  UCC File Number: 187638891768 entered on 03/19/2018	All personal property located on or used in operation of real property, including crops, equipment, water rights and intangibles	\$4,256,115	Deaver Ranch Inc.  Kenneth Deaver Mary Jean Deaver  Shenandoah Investment Properties, Inc.
<b>United States of America, Acting Through the Farm Service Agency – Stockton, CA</b>	2  UCC File Number: 187675962061 entered on 10/15/2018	Includes crops, livestock, equipment, proceeds, intangibles	Unknown	Kenneth Deaver  Deaver Ranch  Amador Flower Farms  Shenandoah Investment Propertis [sic] Inc.
<b>NXGEN Capital</b>	3  UCC File Number: 207774231457 entered on 04/21/2020	Accounts, goods, work in progress, etc., and general intangibles	Unknown. Debtors believe this UCC secured a loan Kapitius that has been paid in full	Amador Flower Farm  Deaver Vineyards  Kenneth Deaver  Shenandoah Investment Properties, Inc.
<b>AgWest Farm Credit, PCA</b>	4  UCC File Number: U210040219527 with an initial lien financing statement entered on 09/21/2020	Farm products, crops, livestock, equipment, inventory, general intangibles, etc.	\$1,200,000	Amador Flower Farm  Deaver Ranch Inc.  Kenneth Henry Deaver Mary Jean Deaver  Shenandoah Investment Properties Inc.  The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012

<b>Farm Credit West, PCA – Tulare, CA</b>	5  UCC File Number U200020600411 recorded on 09/21/2020	Existing and after-acquired goods, crops livestock, offspring, equipment, accounts, etc.	\$0	Amador Flower Farm  Deaver Ranch, Inc.  Mary Jean Deaver  Shenandoah Investment Properties, Inc.  The Kenneth H. Deaver and Mary Jean Deaver Trust II Revocable Trust Dated July 7, 2012
<b>C T Corporation System as Representative</b>	6  UCC File Number: U220240228730 Recorded on 11/01/2022	Accounts, contract rights, chattel paper, general intangibles, etc.	\$50,000.00	Amador Affordable Housing  Amador Affordable Housing Inc.  Deaver Ranch  Deaver Ranch Inc.  Kenneth Deaver  Dever [sic] Vineyards  Rancho Del Oro Park LP  Shenandoah Investment Properties, Inc.
<b>C T Corporation System as Representative</b>	7  UCC File Number: U220240859435 recorded on 11/01/2022	All assets owned or hereafter acquired, including accounts and general intangibles	Unknown	Deaver Ranch Inc  Shenandoah Investment Properties Inc
<b>Corporation Service Company, as Representative for Prosperum Capital Partners LLC</b>	8  UCC File Number U240037112828 recorded on 04/29/2024	Accounts, AR, etc., and general intangibles	\$32,000	Deaver Vineyards  Kenneth Deaver  Shenandoah Investment Properties

(collectively, “Collateral”). Decl. 6:1-7:28, Docket 39. The UCC-1 Financing Statements depicting the secured transactions of the various items of Personal Property are included as authenticated Exhibits 3-10, at Docket 40.

## Proposed Use of Cash Collateral Budgets

Debtor in Possession proposes to use cash collateral for the following expenses, submitting two proposed budgets:

KEN & JEANNE DEEVER -13 WEEK												
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24
<b>INCOME</b>												
DEEVER RANCH RENT			20,000					20,000				
FLOWER FARM PAYROLL												
DEEVER VINEYARDS PAYROLL	2,537	2,537	2,037	2,537	2,537	2,537	2,537	2,037	2,537	2,537	2,537	
SHEEP GOATS COWS												
SOCIAL SECURITY (KEN & JEANNE)	3,354				3,354			3,354				
<b>TOTAL INCOME</b>	<b>\$5,891</b>	<b>\$2,537</b>	<b>\$22,037</b>	<b>\$2,537</b>	<b>\$5,891</b>	<b>\$2,537</b>	<b>\$2,537</b>	<b>\$25,391</b>	<b>\$2,537</b>	<b>\$2,537</b>	<b>\$2,537</b>	<b>\$</b>
<b>HOUSEHOLD EXPENSES</b>												
BANK FEES	30	30	30	30	30	30	30	30	30	30	30	30
FUEL - GASOLINE	100	100	100	100	100	100	100	100	100	100	100	100
INSURANCE - MEDICAL EXPENSES		652					652					652
INSURANCE - LIFE			2,300					2,300				
INSURANCE PKG INC LIABILITY, FIRE, ETC			3,000					3,000				
INSURANCE VEHICLES			121					121				
MAINTENANCE & REPAIRS		300				300						300
MEDICAL EXPENSES			260					260				
FOOD AND MISC PERSONAL EXPENSES	500	250	250	250	500	250	250	250	500	250	250	
PROPERTY TAXES												
SHEEP GOAT COW EXPENSE			7,000					2,000				
UTILITIES			3,000					3,000				
TELEPHONE		300					300					300
PROPANE	300				300				300			
<b>TOTAL HOUSEHOLD EXPENSES</b>	<b>\$930</b>	<b>\$1,632</b>	<b>\$16,061</b>	<b>\$380</b>	<b>\$930</b>	<b>\$680</b>	<b>\$1,332</b>	<b>\$11,061</b>	<b>\$930</b>	<b>\$380</b>	<b>\$1,632</b>	<b>\$8</b>
PRUDENTIAL												
<b>TOTAL NON-HOUSEHOLD EXPENSE</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>TOTAL EXPENSES</b>	<b>\$930</b>	<b>\$1,632</b>	<b>\$16,061</b>	<b>\$380</b>	<b>\$930</b>	<b>\$680</b>	<b>\$1,332</b>	<b>\$11,061</b>	<b>\$930</b>	<b>\$380</b>	<b>\$1,632</b>	<b>\$8</b>
BEGINNING CASH	\$5,000	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$
NET CASH FLOW	\$4,961	\$905	\$5,976	\$2,157	\$4,961	\$1,857	\$1,205	\$14,330	\$1,607	\$2,157	\$905	\$
ENDING CASH	\$9,961	\$10,866	\$16,842	\$18,999	\$23,960	\$25,817	\$27,022	\$41,352	\$42,959	\$45,116	\$46,021	\$

Ex. 1, Docket 40.

Debtor in Possession proposes another cash collateral budget at Exhibit 2, titled “Ken & Jeanne Deaver - 13 Week.” *Id.* at 6. However, the budget is not complete, and the image of the chart cuts off after week 11. What is provided is as follows:

Debtor in Possession seeks authorization for the court to approve both proposed cash collateral budgets in Exhibit 1 and Exhibit 2. Of importance, the court ruled on the interim cash collateral motions of Deaver Ranch Inc., a California Corporation, Case no. 24-23905, and Shenandoah Investment Properties, Inc., a California Corporation, Case no. 24-23909, ruling that those related debtors may not distribute payments to Debtor in Possession in this case in the interim period. *See* Order, Docket 35, Case no. 24-23905; Order, Docket 34, Case no. 24-23909. As such, Debtor in Possession proposes using the income generated by Amador Flower Farm in Exhibit 1 to pay allowed living and business expenses until the court approves payment to Debtor in Possession generated from the related cases. Mot. 12:22-27, Docket 37.

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category. Mot. 2:25, Docket 37.

## APPLICABLE LAW

Pursuant to 11 U.S.C. § 1203, a debtor in possession serves as the trustee in the Chapter 12 case and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm or commercial fishing operation. 11 U.S.C. § 1203. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy

AMADOR FLOWER FARM -13 WEEK													
	8/18/24	8/25/24	9/1/24	9/8/24	9/15/24	9/22/24	9/29/24	10/6/24	10/13/24	10/20/24	10/27/24	11/3/24	11/10/24
<b>INCOME</b>													
SHOP SALES	2,000	2,000	2,000	3,500	4,000	4,000	3,000	3,100	2,100	2,100	2,100	2,100	2,100
PUMPKIN SALES							11,000	15,000	14,000	16,000	13,000	500	200
SALES TAX	-155	-155	-155	-271	-310	-310	-233	-240	-163	-163	-163	-163	-163
<b>TOTAL INCOME</b>	<b>\$1,845</b>	<b>\$1,845</b>	<b>\$1,845</b>	<b>\$3,229</b>	<b>\$3,690</b>	<b>\$3,690</b>	<b>\$13,768</b>	<b>\$17,860</b>	<b>\$15,937</b>	<b>\$17,937</b>	<b>\$14,937</b>	<b>\$2,437</b>	<b>\$2,137</b>
<b>SHOP EXPENSES</b>													
ADVERTISING			200	300		500		200	200	200	200	100	
BANK CHARGES	75	75	75	75	75	75						75	75
DUCK FOOD							200						
FOOD / LODGING / TRAVEL							10	10	10				
INVENTORY PURCHASED		1,000		1,000		1,000	7,500	7,500	7,000		5,000	1,000	
DON POTTER (INVENTORY)										30,000			
LIABILITY INSURANCE			700						700				
MAINTENANCE & REPAIRS													
MERCHANT FEES	16	16	18	20	30	30	300	300	300	300	300	25	25
STAFF PAYROLL (reimb. by Deaver Ranch)	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250	2,250
POSTAGE	30	30	30	30	30	30	30	30	30	30	30	30	30
OUTSIDE SERVICES (MARKETING, ETC.)					302			302		302			
SHIPPING (UPS)						30				30			30
UTILITIES - ELECTRICITY					650				650				650
UTILITIES - PROPANE													
UTILITIES - TELEPHONE			250					250				250	
<b>TOTAL SHOP</b>	<b>\$2,371</b>	<b>\$3,371</b>	<b>\$3,523</b>	<b>\$3,675</b>	<b>\$3,337</b>	<b>\$3,915</b>	<b>\$10,290</b>	<b>\$10,842</b>	<b>\$11,140</b>	<b>\$33,112</b>	<b>\$7,780</b>	<b>\$3,730</b>	<b>\$3,060</b>
<b>TOTAL EXPENSES</b>													
BEGINNING CASH	\$5,000	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934
NET CASH FLOW	-\$526	-\$1,526	-\$1,678	-\$446	\$353	-\$225	\$3,478	\$7,018	\$4,797	-\$15,175	\$7,157	-\$1,293	-\$923
ENDING CASH	\$4,474	\$2,948	\$1,270	\$824	\$1,177	\$952	\$4,429	\$11,447	\$16,244	\$1,070	\$8,227	\$6,934	\$6,011



prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for operating the various business operations and generating income to fund a Chapter 12 plan.

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral for the period through and including October 14, 2024. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor in Possession. All surplus cash collateral from the Collateral is to be held in a cash collateral account and accounted for separately by Debtor in Possession.

All creditors with claims secured by cash collateral, are granted replacement liens on the property of the Bankruptcy Estate in the same types of assets acquired and the same extent, validity, and priority as their pre-petition liens the extent that the use of cash collateral results in a diminution of the value of such creditor’s collateral.

The hearing is continued and the final hearing on this Motion shall be conducted at 10:30 a.m. on October 3, 2024. Notice of the continued hearing and the Motion pleadings, if not already served, shall

be filed and served on or before three days after the entry of the order granting this relief. Oppositions, if any, shall be filed and served on or before September 24, 2024, and Replies presented orally at the hearing.

**Counsel for the Debtor in Possession shall prepare and lodge with the court a proposed order consistent with the above Ruling.**

4. [24-22531](#)-E-11

**R & A ENTERPRISES, LLC**  
**Stephen Reynolds**

**CONTINUED CONFIRMATION OF PLAN**  
**6-17-24 [21]**

**Item 4 thru 5**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Subchapter V Trustee, attorneys of record who have appeared in the case, creditors, and Office of the United States Trustee on July 9, 2024. By the court's calculation, 86 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Confirmation of Plan of Reorganization is denied.</b>
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The Plan Proponent, R & A Enterprises, LLC ("Debtor in Possession"), has complied with the Service and Filing Requirements for Confirmation:

July 10, 2024: Plan and related pleadings to be served on interested parties.

August 8, 2024: Last Day to File Objections to Confirmation (continued by this court's Order to September 19, 2024. Docket 47).

September 26, 2024: Last Day to File Replies to Objections, evidence in support of confirmation, Tabulation of Ballots, Proof of Service.

Order Setting Confirmation Hearing and Related Deadlines, Docket 22.

Debtor in Possession did not file any evidence in support of confirmation.

## **CREDITOR’S OPPOSITION**

On September 19, 2024, creditor Patriot Bank, N.A. filed an Opposition to Confirmation. Docket 59. Creditor states:

1. Debtor reports it is in the process of repairing its financial reporting which will be completed by October 1, 2024, and this process must be completed before evaluation and confirmation of any plan. Opp’n 1:23-25, Docket 59.
2. There is no motion or evidence to support confirmation of the Plan. *Id.* at 2:21.
3. The Plan projections of income significantly overstate what the Debtor’s income is. *Id.* at 2:24.
4. The Plan fails to include required provisions for curing the arrears, and fails to provide a reasonable cushion for winter months when the Debtor’s income drops significantly. *Id.* at 3:3-5.
5. The Debtor’s actual income and expenses as reported in the MORs are very different from the unrealistically high hypothetical income projections in the Plan and Cash Collateral Budgets, and again for which no evidence is provided. *Id.* at 3:14-16.
6. The performance of the Plan will require payments to the Debtor’s professionals, and to the Subchapter V Trustee. The Plan does not provide for such payments. *Id.* at 5:6-7.
7. The Plan must provide “appropriate remedies” in the event that plan payments are not made 11 U.S.C. § 1191(c)(3)(B). The Plan does not provide for such remedies. *Id.* at 5:17-18.

## **DISCUSSION**

### **Table of Classes**

<b>Creditor/Class</b>	<b>Treatment</b>	
Class 1: Priority Claims	<b>Claim Amount</b>	\$0
	<b>Impairment</b>	unimpaired

Class 2: Patriot Bank, N.A.	<b>Claim Amount</b>	\$3,785,609.62
	<b>Impairment</b>	impaired
	\$32,000 monthly payment	
Class 3: Non-priority Unsecured Claims	<b>Claim Amount</b>	
	<b>Impairment</b>	impaired
Class 4: Equity Interests	<b>Claim Amount</b>	
	<b>Impairment</b>	impaired
	The two equity owners will retain their interests	

The Plan does not appear feasible, the court finding Creditor's Opposition to have merit. No evidence is given in support of confirmation, and the court assumes Debtor in Possession is in the process of revising the terms of the Plan.

At the hearing, **XXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Confirmation of Plan of Reorganization by Debtor in Possession, R & A Enterprises, LLC ("Debtor in Possession"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Confirmation of Plan of Reorganization is denied.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor in Possession's Attorney, creditors, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. Fed. R. Bankr. P. 4001(b)(2) (requiring fourteen days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Authority to Use Cash Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Authority to Use Cash Collateral and Grant Replacement Liens**  
**is XXXXXXX**

### October 3, 2024 Hearing

The court continued the hearing on this Motion pursuant to the parties Stipulation (Docket 44), having granted use of cash collateral through October 31, 2024. Order, Docket 46.

At the hearing, XXXXXXX

### REVIEW OF THE MOTION

R & A Enterprises, LLC ("Debtor/Debtor in Possession") moves for an order approving the use of cash collateral. Debtor in Possession is a Limited Liability Company that has built and opened a car wash business in Yreka, California, called Splash and Dash Car Wash ("Car Wash"). Debtor obtained an SBA

guaranteed loan from Patriot Bank, N.A. (“Creditor”), and used the proceeds to build the Car Wash and begin operations in 2022.

Creditor is secured by the real property commonly known as 1902 Fort Jones Rd., Yreka California 96097, all assets and personal property owned or acquired by Debtor in Possession, and for which John J. Richter has given his personal guarantee.

Debtor/Debtor in Possession requests the use of cash collateral to continue operations of the car wash and to administer and preserve the value of the Estate. Mot. 3:21-24, Docket 14.

Debtor/Debtor in Possession proposes to use cash collateral for the following expenses:

Proforma for Express Carwash	Splash & Dash Car Wash		YEAR 1				2024				
	PAID CARS	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars	Total Cars
			MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN
Tremor	\$12.00	70.00%	5432	5900	6500	7100	6700	6000	5500	5000	5500
Seismic Wash	\$16.00	10.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500
Richter Scale Wash	\$20.00	20.00%	5432	6200	6800	7200	6500	5900	5000	5000	5500
Tremor Wash Revenue	paid washes		\$45,628.80	\$49,560.00	\$54,600.00	\$59,640.00	\$56,280.00	\$50,400.00	\$46,200.00	\$42,000.00	\$46,200.00
Seismic Wave Revenue	paid washes		\$8,691.20	\$9,920.00	\$10,880.00	\$11,520.00	\$10,400.00	\$9,440.00	\$8,000.00	\$8,000.00	\$8,800.00
Richter Scale Wash Revenue	paid washes		\$21,728.00	\$24,800.00	\$27,200.00	\$28,800.00	\$26,000.00	\$23,600.00	\$20,000.00	\$20,000.00	\$22,000.00
MONTHLY UNLIMITED	\$35.00 RELOADS		\$19,250.00	\$21,000.00	\$22,750.00	\$24,500.00	\$25,375.00	\$24,500.00	\$24,500.00	\$24,500.00	\$24,500.00
tire shine	\$5.00/CAR		\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00
<b>Total Gross Monthly Revenue</b>			<b>\$95,573.00</b>	<b>\$105,555.00</b>	<b>\$115,705.00</b>	<b>\$124,735.00</b>	<b>\$118,330.00</b>	<b>\$108,215.00</b>	<b>\$98,975.00</b>	<b>\$94,775.00</b>	<b>\$101,775.00</b>
CREDIT CARD FEE	3% of Gross Revenue		\$2,867.19	\$3,166.65	\$3,471.15	\$3,742.05	\$3,549.90	\$3,246.45	\$2,969.25	\$2,843.25	\$3,053.25
<b>Total Gross Revenue</b>			<b>\$92,705.81</b>	<b>\$102,388.35</b>	<b>\$112,233.85</b>	<b>\$120,992.95</b>	<b>\$114,780.10</b>	<b>\$104,968.55</b>	<b>\$96,005.75</b>	<b>\$91,931.75</b>	<b>\$98,721.75</b>
<b>Expenses</b>											<b>TOTAL EXP.</b>
Manager /Per Month #1			\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00	\$6,000.00
Employees			\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00
PAYROLL TAX			\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00
Electric			\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00
Water			\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00	\$1,200.00
Chemical			\$3,802.40	\$4,130.00	\$4,550.00	\$4,970.00	\$4,690.00	\$4,200.00	\$3,850.00	\$3,500.00	\$3,850.00
Liability Ins.			\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00	\$2,416.00
DRB support for POS/equipment			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
Real Property Tax (Estimated@1.5% of land & Bldg.)			\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00	\$3,750.00
Advertising			\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
Phone and Internet			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
Maintenance			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
SECURITY CAMERA			\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00	\$275.00
Legal and Accounting			\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00	\$500.00
Claims			\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00	\$300.00
Trash Pickup			\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00	\$600.00
Company paid fuel			\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00	\$1,750.00
Owners Company car insurance			\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00	\$550.00
MANAGEMENT FEE(ARNESEN)			\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00	\$2,500.00
RICHTER LOAN INTEREST			\$0.00	\$0.00	\$0.00	\$0.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00	\$4,800.00
Misc.			\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
<b>Total Monthly Expenses</b>			<b>\$47,593.40</b>	<b>\$46,171.00</b>	<b>\$46,591.00</b>	<b>\$47,011.00</b>	<b>\$46,731.00</b>	<b>\$46,241.00</b>	<b>\$45,891.00</b>	<b>\$45,541.00</b>	<b>\$45,891.00</b>
<b>Monthly Gross Revenue</b>			<b>\$92,705.81</b>	<b>\$102,388.35</b>	<b>\$112,233.85</b>	<b>\$120,992.95</b>	<b>\$114,780.10</b>	<b>\$104,968.55</b>	<b>\$96,005.75</b>	<b>\$91,931.75</b>	<b>\$98,721.75</b>
<b>Monthly Gross Profit</b>			<b>\$45,112.41</b>	<b>\$56,217.35</b>	<b>\$65,642.85</b>	<b>\$73,981.95</b>	<b>\$68,049.10</b>	<b>\$58,727.55</b>	<b>\$50,114.75</b>	<b>\$46,390.75</b>	<b>\$52,830.75</b>
<b>BANK PAYMENT YEAR 1</b>			<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>	<b>\$32,000.00</b>
<b>Monthly Net</b>			<b>\$13,112.41</b>	<b>\$24,217.35</b>	<b>\$33,642.85</b>	<b>\$41,981.95</b>	<b>\$36,049.10</b>	<b>\$26,727.55</b>	<b>\$18,114.75</b>	<b>\$14,390.75</b>	<b>\$20,830.75</b>

Exhibit, Docket 17. Creditor would be paid \$32,000 per month during 2024 as adequate protection under this proposed budget.

Debtor/Debtor in Possession submits the Declaration of its attorney, Stephen M. Reynolds, in support. Decl., Docket 16. Mr. Reynold's testimony authenticates the budget and states the \$32,000 monthly payment is roughly the contract amount. *Id.* at ¶ 2.

## **CREDITOR'S OPPOSITION**

Creditor submitted an Opposition on June 28, 2024. Docket 25. Creditor states that it has accelerated the loan, and the balance owing is in excess of \$3,750,000. Opp'n ¶ 2, Docket 25. Creditor argues there is no evidence showing that its interest is adequately protected. Mr. Reynolds Declaration in support of the Motion is "not based on personal knowledge, lacks foundation, and is inadmissible." *Id.* at ¶ 3.

Creditor states, if the loan were not accelerated, its monthly payment would be \$34,372.77, not \$32,000. Creditor argues the car wash machinery and equipment has limited life and Debtor/Debtor in Possession's use decreases the value. *Id.* at ¶ 5. Debtor/Debtor in Possession has failed to show its proposed payments adequately protect Creditor.

Finally, Credit requests if Debtor/Debtor in Possession is authorized to use cash collateral, it be on an interim basis and no budget is approved until Creditor consents or Debtor/Debtor in Possession provides evidence and a showing in support of a proposed budget. *Id.* at 6:13-19.

## **APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

## **DISCUSSION**

Debtor/Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use provides for Debtor/Debtor in Possession to continue and operate the business as it produces value for the Estate. Creditor will also receive a substantial monthly adequate protection payment in the amount of \$32,000, which the court finds sufficiently protects Creditor's interest in this interim period.

However, Creditor requests evidence and a showing that the proposed budget offers sufficient adequate protection payments to preserve its interest.

As Creditor points out, the testimony in support of the Debtor/Debtor in Possession's Motion is Debtor/Debtor in Possession's counsel, who testifies that:

- ★ The Debtor/Debtor in Possession His client has told him
- ★ That the Debtor/Debtor in Possession has prepare a budget
- ★ That the Debtor/Debtor in Possession says that the budget information is accurate
- ★ That counsel heard the Debtor/Debtor in Possession say that the budget has been prepared accurately
- and
- ★ That counsel testifies that he personally heard the Debtor/Debtor in Possession say the forgoing.

Declaration; Dckt. 16.

No responsible representative of the Debtor/Debtor in Possession has come forward to testify as to the financial information concerning the Debtor/Debtor in Possession, who is the fiduciary of the Bankruptcy Estate operating this business that is property of the Bankruptcy Estate. 11 U.S.C. § 541(a).



The Bankruptcy Petition is signed by John Richter as the “Managing Member” of the Debtor Limited Liability Company. Dckt. 1 at p. 4. Mr. Richter is identified as the only managing member.

Mr. Richter not providing testimony, as the responsible representative of the Debtor, caused the court some concerning. This led to the court checking the California Secretary of State’s website for R & A Enterprise, LLC’s registration to do business in California. The court’s inquiry resulted in finding an entity named R & A Enterprises, LLC registered with the State of California, with its agent listed as Ara Tien and its principal and mailing address of 25648 Moore Lane, Stevenson Ranch, California. Stevenson Ranch, California is in Los Angeles County.

A LEXIS public records search turned up an entity named R & A Enterprises, LLC being registered in Nevada. The manager is identified as John Richter, who is listed as the manager for the Debtor in this Case. Foreign entities are required to register See Cal. Corp. Code §§ 17708.01 *et seq.* California Corporation Code § 17708.02 provides for a foreign limited liability company to obtain a certificate or registration to transact business in California.

At the hearing, the court addressed with the Parties the issues relating to the use of cash collateral. The Subchapter V Trustee stated that he supported the requested use of Cash Collateral.

The Debtor/Debtor in Possession stated that it agreed to increase the monthly adequate protection payment to creditor Patriot Bank, N.A. to \$34,372.77.

The Motion is granted, and Debtor/Debtor in Possession is authorized to use the cash collateral for the period May, 2024, through September 30, 2024, including required monthly adequate protection payments of \$34,372.77 to Creditor Patriot Bank, N.A., with the adequate protection payments applied to its secured claim in this case. The court does not pre-judge and authorize the use of any monies for “plan payments” or use of any “profit” by Debtor/Debtor in Possession. All surplus cash collateral from the Car Wash is to be held in a cash collateral account and accounted for separately by Debtor/Debtor in Possession.

The court grants this Motion on and interim basis and continues the hearing to 11:30 a.m. on August 22, 2024, for Debtor/Debtor in Possession to file any Supplements to the Motion to extend authorization. That Supplement, if any, is due by August 15, 2024, with any opposition to be presented orally at the continued hearing.

The court grants Creditor Patriot Bank, N.A. a replacement lien in post-petition acquired assets of the same kind that are subject to its prepetition lien, to the extent that Creditor’s collateral is reduced by the cash collateral used.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by R & A Enterprises, LLC (“Debtor/ in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXX**.

6. [23-23834-E-7](#)  
[DNL-8](#)

ANTONETTE TIN  
Peter Macaluso

CONTINUED MOTION FOR TURNOVER  
OF PROPERTY  
8-7-24 [[177](#)]

Item #3 on 10:00 calendar

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Turnover has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Turnover is <b>XXXXXXX</b>.</b></p>
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### October 3, 2024 Hearing

The court continued the hearing on this Motion to allow Debtor to make all required turnover payments to Trustee, and to provide Trustee with an accounting for all revenues and expenses, and the profit distribution calculation, for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC. Order, Docket 228.

As of the court's October 1, 2024 review of the Docket, no updated information had been filed with respect to the continued hearing.

At the hearing, **XXXXXXX**

### REVIEW OF MOTION

Nikki Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin (“Debtor Tin”) to account for and turn over her interest in The Retreat at Skylake LLC (“Skylake LLC”) and The Retreat at Greenhurst LLC (“Greenhurst LLC”).

Movant argues that on the petition date, Debtor Tin held 100% ownership of Skylake LLC and Greenhurst LLC. She used these LLCs to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way, Sacramento real properties, currently controlled by Debtor Tin and her spouse, Exequiel Fernando. Mot. 2:15-18, docket 177. According to Movant, monthly income from Debtor Tin’s interest in the LLCs is estimated to be at least \$16,000 per month. *Id.* at 2:19-22. A sale of these interests could generate income for the Bankruptcy Estate. However, Debtor Tin has not complied with accounting and turnover requests made by Movant on April 23, 2024, and August 1, 2024. *Id.* at 2:25-26.

Movant submits her own Declaration in support at Docket 180, authenticating the facts alleged in the Motion. Movant submits as Exhibits the prior requests for turn over and accounting. Docket 179.

On September 10, 2024, Movant submitted a Supplemental Declaration, detailing Bank of America’s response to a Rule 2004 Examination Request. Docket 216. Movant testifies as to large amounts of money being moved around among the entities post-petition, including a \$56,000 sum paid from Skylake LLC to a trust controlled by Debtor Tin, and Greenhurst LLC paying \$52,000 to a trust controlled by Mr. Fernando. *Id.* at ¶ 6.

## **DISCUSSION**

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor Tin to deliver accountings and business interests to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor’s estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C.

§ 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this Motion by Debtor or any other party in interest.

The interests in the LLC's are property of the Bankruptcy Estate and it is not clear what will be "turned over." The Motion further requests that the Debtor turnover the proceeds of the LLCs that come into her possession, which would be the monies generated from the operations of the businesses therein.

At the hearing, the Parties identified the following items to be turned over to the Chapter 13 Trustee:

- A. \$5,562.00, which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Skylake LLC;
- B. \$5,022.00 which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Greenhurst LLC; and
- C. An Income and Expense Accounting for all revenues and expenses for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC.

The profit distributions and the accountings shall be delivered to Russell J. Cunningham, Esq., counsel for the Chapter 7 Trustee on or before September 26, 2024. The payment by the Debtor of the \$5,562.00 and \$5,022.00 to the Trustee by the Debtor is without prejudice to the rights and interests of the Bankruptcy Estate to profit distributions from each of the Limited Liability Companies, computation of profits and distributions for that period, and other rights and interests relating thereto.

The hearing on the Motion is continued to 10:30 a.m. on October 3, 2024.

### **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Turnover of Property filed by Nikki Farris, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS FURTHER ORDERED** that the Motion for Turnover is **XXXXXXX**

# FINAL RULINGS

7. [23-23620-E-11](#)  
[DL-1](#)

**ROBERT P. OBREGON DDS  
INC.  
Gabriel Liberman**

**MOTION FOR COMPENSATION FOR  
WALTER R. DAHL, CHAPTER 11  
TRUSTEE(S)  
8-22-24 [\[188\]](#)**

Item 7 thru 8

**Final Ruling:** No appearance at the October 3, 2024 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, attorneys of record who have appeared in the case, parties requesting special notice, and Office of the United States Trustee on August 22, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<b>The Motion for Allowance of Professional Fees is granted.</b>
--

Walter R. Dahl, the Chapter 11 Subchapter V Trustee (“Trustee”) for the bankruptcy estate of Robert P. Obregon DDS Inc. (“Debtor in Possession”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 16, 2023, through October 3, 2024. Trustee was appointed as the Subchapter V Trustee on October 17, 2023. Docket 18. Applicant requests fees in the amount of \$11,233.50 and costs in the amount of \$26.86.

## APPLICABLE LAW

## Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the professional's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the professional exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

## Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

## Reasonable Billing Judgment

Even if the court finds that the services billed by a professional are “actual,” meaning that the fee application reflects time entries properly charged for services, the professional must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A professional must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a professional to work in a bankruptcy case does not give that professional “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include reviewing motions, pleadings, and monthly operating reports, communicating with parties in interest, and appearing before the court on various motions. The court finds the services were beneficial to Debtor in Possession and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Efforts to Assess and Recover Property of the Estate: Applicant spent 3.4 hours in this category. Applicant’s services include: Communications with U.S. Trustee personnel re case assignment and dates for initial debtor interview and meeting of creditors; Review petition, schedules and statements; Prepare for and attend initial debtor interview and meeting of creditors; Review Chapter 11 status reports and attend status conferences. Mot. 2:20-24, Docket 188.

Business Operations: Applicant spent 3.6 hours in this category. Applicant’s services include: Review of various monthly operating reports; Court appearance on motion to maintain prepetition accounts and cash management procedures. Mot. 2:15-16, Docket 188.

Claims Administration & Objections: Applicant spent 1.7 hours in this category. Applicant’s services include: Court appearance on Debtor’s motion to value collateral of Bankers Healthcare; Review motion, supporting pleadings and responsive pleadings. *Id.* at 3:1-5.

Fee/Employment Applications: Applicant spent 2.9 hours in this category, and Applicant’s paralegal spent 1.6 hours in this category. Applicant’s services include: : Prepare, file and serve motion and supporting pleadings for first and final compensation for Subchapter V Trustee fee application; Attend hearing on Subchapter V Trustee compensation motion. *Id.* at 3:6-12.

Financing: Applicant spent 3.8 hours in this category. Applicant’s services include: Review Debtor’s motion for authorization for use of cash collateral; Attend emergency hearing; Review & approve cash collateral orders; Attend continued cash collateral hearings. *Id.* at 3:13-19.

Plan & Disclosure Statement: Applicant spent 7.3 hours in this category. Applicant’s services include: Communications with Debtor’s counsel regarding draft plan of reorganization requirements;



Communications with Debtor's counsel and SBA counsel re plan of reorganization terms and claim treatment; Review objections to confirmation by SBA and by Bankers Healthcare; Attend hearings seeking confirmation of plan of reorganization. *Id.* at 3:20-27.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Paralegal	1.8	\$140.00	\$252.00
Walter R. Dahl	24.4	\$485.00	<u>\$11,834.00</u>
<b>Total Fees Requested for Period of Application</b>			\$11,233.50

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$26.86 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Photocopies	-----	\$3.40
Postage	-----	\$23.46
<b>Total Costs Requested in Application</b>		\$26.86

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$11,233.50 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession in a manner consistent with the order of distribution under the confirmed Plan.

### **Costs & Expenses**

First and Final Costs in the amount of \$26.86 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$11,233.50
Costs and Expenses	\$26.86

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Walter R. Dahl, the Chapter 11 Subchapter V Trustee (“Trustee”) for the bankruptcy Estate of Robert P. Obregon DDS Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Walter R. Dahl is allowed the following fees and expenses as a professional of the Estate:

Walter R. Dahl, Subchapter V Trustee,

Fees in the amount of \$11,233.50  
Expenses in the amount of \$26.86,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as Chapter 11 Subchapter V Trustee for Estate of Debtor in Possession.

**IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

**Final Ruling:** No appearance at the October 3, 2024 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest and Office of the United States Trustee on August 29, 2024. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion for Allowance of Professional Fees is granted.</b></p>
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The Law Offices of Gabriel Liberman, APC, by and through Gabriel E. Liberman, the Attorney (“Applicant”) for Robert P. Obregon DDS Inc. (“Debtor in Possession”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 13, 2023, through August 5, 2024. The order of the court approving employment of Applicant was entered on December 1, 2023. Dckt. 62. Applicant requests fees in the amount of \$39,665.00 and costs in the amount of \$431.80.

## APPLICABLE LAW

### Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for Debtor in Possession include generally representing Debtor in Possession throughout the case, ultimately confirming a consensual Plan. The court finds the services were beneficial to Debtor in Possession and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 2.7 hours in this category. Applicant assisted Debtor in preparing its response to the United States' Trustee Office and the Court's Order to Show Cause regarding the appointment of an Ombudsman. *Id.* at 4:8-10.

341 Meeting of Creditors/ Initial Debtor Interview: Applicant spent 7.7 hours in this category. Applicant assisted Debtor in obtaining documents and representing Debtor at the Initial Debtor Interview, which applicant appeared with Debtor's representative. Mot. 4:1-7, Docket 194.

Cash Collateral: Applicant spent 7.7 hours in this category. Applicant assisted Debtor with post-petition use of cash collateral and adequate protection payments to Debtor's secured creditors. Applicant represented Debtor at the initial emergency hearings on the first day motions which approval was granted interim basis. Subsequent requests for interim use up and through August 6, 2024, were also granted by the Court. *Id.* at 4:11-16.

Cash Management Systems: Applicant spent 2.5 hours in this category. Applicant assisted Debtor with compliance with the UST office's banking requirements with opening a Debtor in Possession bank account. As part of Debtor's initial emergency hearings on first day motions, the Applicant filed and requested Debtor use its existing bank account due to Debtor's inability to find a bank to open and operate its Debtor in Possession bank account. The Court granted the motion and Debtor was able to continue operating its business without any banking interferences. *Id.* at 4:17-23.

Claims Administration: Applicant spent 2.7 hours in this category. Applicant reviewed filed claims. *Id.* at 4:24-26.

Employment of Professionals: Applicant spent 6.8 hours in this category. Applicant prepared and filed applications to employ, and applications for fees. *Id.* at 4:27-5:5.

MORs, FORM 26, Reporting: Applicant spent 3.5 hours in this category. Applicant assisted Debtor in filing and serving its monthly operating reports. Of the 3.5 hours, Applicant billed 3.1 hours under its paralegal rate of \$150.00 regarding review and preparing the MORs for filing. .4 hours were billed at Applicant's attorney rate related to communications with Debtor related to MOR issues. *Id.* at 5:6-10.

Plan and Disclosure Statement: Applicant spent 51.3 hours in this category. Applicant drafted and confirmed a consensual Chapter 11 Plan. *Id.* at 5:11-28.

Schedules: Applicant spent .8 hours in this category. Applicant drafted and filed Schedules. *Id.* at 5:28-6:1.

Status Conference and Reports: Applicant spent 3.2 hours in this category. Applicant drafted and filed status conference reports. *Id.* at 6:2-4.

Valuation: Applicant spent 27.8 hours in this category. Applicant drafted, prepared, and filed five motions to value. *Id.* at 6:5-19.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Gabriel E. Liberman	116.7	\$350.00	<u>\$40,845.00</u>
<b>Total Fees Request for Period of Application</b>			\$39,665.00

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$431.80 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Court Call	-----	\$56.50
Printing/Photocopies		\$0.00
Parking fees		\$11.05
Postage		\$364.25
<b>Total Costs Requested in Application</b>		\$431.80

The court does not reimburse the cost for court call as the attorney is free to appear in court and be reimbursed for related parking. Therefore, costs in the amount of \$375.30 are approved.

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$39,665.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

### **Costs & Expenses**

First and Final Costs in the amount of \$375.30 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant is allowed, and Debtor in Possession is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$39,665.00
Costs and Expenses	\$375.30

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by The Law Offices of Gabriel Liberman, APC, by and through Gabriel E. Liberman, the Attorney (“Applicant”) for Robert P. Obregon DDS Inc. (“Debtor in Possession”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gabriel E. Liberman is allowed the following fees and expenses as a professional of the Estate:

Gabriel E. Liberman, Professional employed by Debtor in Possession

Fees in the amount of \$39,665.00  
Expenses in the amount of \$375.30,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor in Possession.

**IT IS FURTHER ORDERED** that Debtor in Possession is authorized to pay the fees and costs allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

9. [22-22625-E-7](#)  
[RLL-2](#)

JASON/CHRISTINE EATMON  
Bruce Dwiggin

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF REYNOLDS LAW, LLP  
FOR ANTHONY ASEBEDO, TRUSTEES  
ATTORNEY(S)  
8-22-24 [[132](#)]

**Final Ruling:** No appearance at the October 3, 2024 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 7 Trustee, creditors that have filed claims, parties requesting special notice, and Office of the United States Trustee on August 22, 2024. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days’ notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days’ notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion for Allowance of Professional Fees is granted.**

Reynolds Law, LLP, the general counsel (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee (“Trustee”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 26, 2023, through August 16, 2024. The order of the court approving employment of Applicant was entered on October 10, 2023. Dckt. 53. Applicant requests fees in the amount of \$5,560.00 and no costs.

## APPLICABLE LAW

### Reasonable Fees



A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include asset analysis and recovery, case administration, employment and fee applications, and asset disposition work. The Estate has \$98,500 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Trustee and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 5.2 hours in this category. Applicant assisted the Trustee by handling case-status and other questions from creditors, including counsel for the estate’s primary unsecured creditor, and communicated extensively with Chad to answer questions regarding the bankruptcy case and the Trustee's role in administering the bankruptcy estate. Mot. 3:26-4:2, Docket 132.

Asset Analysis and Recovery: Applicant spent 3.3 hours in this category. Applicant communicated extensively with the Trustee and with the trustees of the The Robert P. and Nancy G. McGowan Living Trust (“Trust”) to determine the existence and extent of the bankruptcy estate's interest in the Trust and the most practical means to reduce that interest to cash for the benefit of creditors. Mot. 3:22-25, Docket 132.

Employment and Fee Applications: Applicant spent 3.9 hours in this category. Applicant prepared, filed, and served the application for approval of RLL's employment as general counsel (Docket Control No. RLL-1); prepared this motion for approval of compensation to RLL (Docket Control No. RLL-2). *Id.* at 4:3-6.

Asset Disposition: Applicant spent 15.2 hours in this category. Applicant worked over a period of about twelve months to monitor the preservation and disposition of the Residence, by communicating regularly with Chad and before him Christine Eatmon and her bankruptcy counsel to help assure that the Residence (2189 Deerfield Avenue, Redding, California) was exposed to the market for sale, was sold, and that the bankruptcy estate’s share of sale proceeds on account of its interest in the Trust were promptly distributed to the Trustee. *Id.* at 4:7-12.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Anthony Asabedo	15.2	\$365.79 (effective rate)	<u>\$5,560.01</u>
<b>Total Fees for Period of Application</b>			\$5,560.00

## **FEES ALLOWED**

### **Hourly Fees**

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of \$5,560.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$5,560.00
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pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Reynolds Law, LLP, the general counsel (“Applicant”) for Geoffrey M. Richards, the Chapter 7 Trustee (“Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Reynolds Law, LLP is allowed the following fees and expenses as a professional of the Estate:

Reynolds Law, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of \$5,560.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

10. [24-22846](#)-E-11

**ISMOIL KASIMOV**  
**David Foyil**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**9-4-24 [68]**

**Final Ruling:** No appearance at the October 3, 2024 Hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on September 6, 2024. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$434 due on August 27, 2024.

**The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.