

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**November 10, 2022 at 10:30 a.m.**

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<b>1. <a href="#"><u>22-90214-E-7</u></a> <a href="#"><u>GR-1</u></a></b>	<b>JULIETA GUDINO-SANCHEZ</b> Travis Poteat	<b>TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS 10-14-22 <a href="#"><u>[21]</u></a></b>
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**APPEARANCE OF TRAVIS M. POTEAT, ESQ.,  
COUNSEL FOR DEBTOR, REQUIRED FOR  
NOVEMBER 10, 2022 HEARING  
[Telephonic Appearance Permitted](#)**

**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—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditors and Office of the United States Trustee on September 23 and 24, 2022. By the court's calculation, 47 and 48 days' notice were provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

**The hearing on the Motion to Dismiss is continued to 10:30 a.m. on XXXXXXX, 2022 .**

**The deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including January 16, 2023.**

The Chapter 7 Trustee, Geoffrey Richards (“Trustee”), seeks dismissal of the case on the grounds that Julieta Gudino-Sanchez (“Debtor”) did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Alternatively, if Debtor’s case is not dismissed, Trustee requests that the deadline to object to Debtor’s discharge and the deadline to file motions for abuse, other than presumed abuse, be extended to sixty days after the date of Debtor’s next scheduled Meeting of Creditors, which is set for 01:30 pm on November 15, 2022. If Debtor fails to appear at the continued Meeting of Creditors, Trustee requests that the case be dismissed without further hearing.

## **DEBTOR’S DECLARATION**

On October 13, 2022, a pleading (with no caption) was filed, which on page 1 starts with “DECLARATION OF JULIETA GUDINO-SANCHEZ: . . .” Dckt. 20 (emphasis in original).

On October 14, 2022, a multiple purpose document titled:

**NOTICE OF HEARING AND OPPOSITION ON TRUSTEE’S  
MOTION TO DISMISS FOR FAILURE TO APPEAR AT § 341(A)  
MEETING OF CREDITORS AND MOTION TO EXTEND THE  
DEADLINES FOR FILING OBJECTIONS TO DISCHARGE AND  
MOTION TO DISMISS; DECLARATION OF JULIETA GUDINO-  
SANCHEZ**

Dckt. 21.

Debtor filed a Declaration on October 13, 2022. Dckt. 20. Debtor states they attempted to appear at the Meeting and continued Meetings, however, had obstacles in making an appearance.

Debtor states they are “able, willing, and ready” to appear at the Meeting on November 15, 2022 at 1:30 pm.

No Certificate of Service has been filed with respect to the “Declaration of Julieta Gudino-Sanchez (Dckt. 20) or the Notice - Opposition - Declaration (Dckt. 21).

## **DISCUSSION**

Debtor did not appear at the Meeting of Creditor’s. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 707(a)(1).

The court notes that on October 13, 2022, Debtor’s counsel first filed a pleading without a caption that was titled on line one of page one as “Declaration of Julieta Gudino-Sanchez.” Dckt. 20.

Then on October 14, 2022, Debtor’s counsel filed the multiple faceted pleading identified above that was a Notice of Hearing - Opposition - Declaration of Julieta Gudino-Sanchez. Dckt. 21.

As has been long established in the Local Bankruptcy Rules in this District, the filing of omnibus, multi document pleadings is not permitted. These Local Bankruptcy Rules include:

**LOCAL RULE 9004-1**  
General Requirements of Form

(a) General Format of Documents. All pleadings and documents shall be formatted consistent with LBR 9004-2. The Clerk shall not refuse to file any proffered document submitted in violation of this Rule, but shall bring such document to the attention of the Court. Any attorney or trustee who files a document in violation of this Rule may be subject to monetary or non-monetary sanctions.

**LOCAL RULE 9004-2**  
Formatting Pleadings and Other Documents

(c) Organization.

1) Filing of Separate Documents. Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

...

(e) Proof of Service.

1) Separate Document. The proof of service for any documents filed shall itself be filed as a separate document.

2) Pleadings Not Attached. Copies of the pleadings and documents served SHALL NOT be attached to the proof of service filed with the court. The proof of service shall identify by title each of the pleadings and documents served.

**LOCAL RULE 9014-1**  
Motion and Other Contested Matter Calendar and Procedure

(d) Format and Content of Motions and Notices.

1) Contents. Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be comprised of a motion, or other request for relief, notice, evidence, and a certificate of service. Unless otherwise ordered, the moving party may, but need not, file a memorandum of points and authorities in support of the motion. Opposition to any request for relief shall be governed by the same principles.

...

4) Separate Documents. Except as provided herein, each of the documents described in subpart (d)(1) hereof shall be filed as a separate document. A motion or other request for relief and a memorandum of points and authorities thereto may be filed together as a single document when not exceeding six (6) pages in length, including the caption page.

...

(l) Sanctions. Failure to comply with the requirements of this Local Rule or the provisions of other Local Rules applicable to motion practice shall constitute grounds, without limitation, to deny the motion, strike late-filed pleadings and documents, continue the hearing on the motion, deem the moving party to have waived the time limitations of 11 U.S.C. § 362(e), deny the offending party the ability to appear by telephone, or assess other appropriate sanctions.

The court's records reflect that Debtor's counsel has been appeared in 113 bankruptcy cases in the Eastern District of California since May 7, 2021. It is unclear how an attorney regularly appearing in this District would not be in compliance with the basic pleading requirements.

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 Motion to Dismiss the Chapter 7 case filed by The Chapter 7 Trustee, Name of 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 the hearing on the Motion to Dismiss is continued to 10:30 a.m. on **XXXXXXX**, 2022.

**IT IS FURTHER ORDERED** that the deadlines to file objections to discharge by Trustee and the U.S. Trustee pursuant to 11 U.S.C. § 707(b) and § 727 are extended through and including January 16, 2023.

Item 2 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—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, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2022. By the court's calculation, 38 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). 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 Turnover is granted.</b></p>
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### MOTION FOR TURNOVER

Michael D. McGranahan, the Chapter 7 Trustee, ("Movant-Trustee") in the above entitled case and moving party herein, seeks an order for turnover as to the real property commonly known as 2022 White Fall Court, Ceres, California ("Property").

### DISCUSSION

In this Bankruptcy Case, Movant-Trustee has initiated this proceeding to compel Ali Saeed Muthana ("Debtor") to deliver the Property to Movant. The Property is listed on Debtor's Schedule A/B filed with Debtor's Chapter 7 Petition on February 11, 2020. Dckt. 1, p. 9.

Movant-Trustee states that on or about May 25, 2021, Debtor facilitated a post-petition transfer, without any authorization, by executing a Grant Deed transferring Debtor's interest in the Property to Bader Suwaid.

Following that transfer, Bader Suwaid executed a letter purporting to give Debtor the benefit of residing on the Property, free of rent, for 10 years, and encumbered the Property with a Deed of Trust to secure a loan of approximately \$250,000.00. Decl., Dckt. 85.

The Movant-Trustee filed an Adversary Proceeding to avoid the transfer and additional relief, and the court granted Movant-Trustee's Motion for Summary Judgment on the causes of action to avoid the transfer. Adv. Proc. 21-09008; Order, Dckts. 82, 90.

### **Entry of Judgment Avoiding the Transfer**

On October 25, 2022, in Adversary Proceeding 21-09008, the court granted Movant-Trustee's Motion for entry of a separate judgment pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054 against Debtor and co-defendant and Bader Alikassim Suwaid avoiding the transfer. That Judgment is to be entered shortly.

### **Avoiding Transfer by Debtor**

Movant-Trustee now seeks turnover of Property by the Debtor so that the Movant-Trustee may sell it for the benefit of the bankruptcy estate and asks the court to force Debtor to vacate the Property.

The Federal Rules of Bankruptcy Procedure permit a trustee to obtain turnover from Debtor without filing an adversary proceeding. Fed. R. Bankr. P. 7001(a).

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.

### **November 10, 2022 Hearing**

At the hearing, **xxxxxxxxx**.

~~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 Michael D. McGranahan, 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 ORDERED** that the Motion for Turnover of Property is granted.~~

~~**IT IS FURTHER ORDERED** that Ali Saeed Muthana (“Debtor”), and each of them, shall deliver on or before December 31, 2022, possession of the real property commonly known as 2022 White Fall Court, Ceres, California (“Property”); with all of their personal property, personal property of any other persons that Debtor, and each of them, allowed access to the Property; and any other person or persons that Debtor, and each of them, allowed access to the Property removed from the Property.~~

~~**IT IS FURTHER ORDERED** that Michael D. McGranahan, the Chapter 7 Trustee, and the Internal Revenue Service shall file and serve a motion to approve a stipulation providing for the carve-out of the Estate’s interest, free and clear of all liens and interests, with a copy of the executed stipulation attached (which shall be contingent on court approval) on or before December 31, 2022.~~

**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, Trustee’s Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2022. By the court’s calculation, 38 days’ notice was provided. 28 days’ notice is required.

The Motion to Pay 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 to Pay insurance premiums and utilities is granted.</b></p>
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### MOTION TO PAY

Michael D. McGranahan (“Movant”) requests payment in the amount of \$7,500.00, for providing insurance premiums and utilities associated with 2022 White Fall Court, Ceres, CA 95307 (the “Real Property”) to Ali Saeed Muthana (“Debtor”).

### DISCUSSION

Section 503(b)(1)(A) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate . . . .” Here, Movant asserts that payment of insurance premiums are necessary while Trustee markets and sells the Real Property. Payment of utilities are also necessary during the time Trustee markets and sells the Real Property to “showcase the Real Property as completely functional during the listing period, and to ensure that there are no substantial defects” which could reduce the net recovery.



Movant having demonstrated that the expenses were necessary, the court finds that Movant providing insurance premiums and utilities relating to the Real Property for Debtor is necessary for Debtor and provides benefit to the Estate. The Motion is granted, and the Chapter 7 Trustee is authorized to pay insurance and payments no more than \$7,500.00.

### November 10, 2022 Hearing

At the hearing, ~~XXXXXXXXXX~~.

~~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 to Pay filed by Michael D. McGranahan (“Movant”) 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 Chapter 7 Trustee is authorized to pay not more than \$7,500.00 as for insurance premiums and utilities associated with the market and sell of the real property commonly known as 2022 White Fall Court, Ceres, California, pursuant to 11 U.S.C. § 503(b)(1).~~

# FINAL RULINGS

4. [22-90225-E-11](#)  
[UST-1](#)

AVINASH SINGH  
David Johnston

MOTION TO DISMISS CASE AND/OR  
MOTION TO CONVERT CASE FROM  
CHAPTER 11 TO CHAPTER 7  
9-30-22 [\[48\]](#)

**Final Ruling:** No appearance at the November 10, 2022 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 11 Trustee, and parties requesting special notice, on September 30, 2022. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 Hearing on the Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case has been continued to December 15, 2022 at 2:00 p.m., pursuant to the court's Order (Dckt. 77).**

## ORDER TO CONTINUE HEARING

On November 2, 2022, the court ordered a continuance of the hearing on the Motion to **December 15, 2022 at 2:00 p.m.**, pursuant to the request by Motion of the United States Trustee. Dckt. 77.

## MOTION TO DISMISS OR CONVERT

This Motion to Dismiss or Convert the Chapter 11 bankruptcy case of Avinash Singh (“Debtor / Debtor in Possession”) has been filed by Tracy Hope Davis (“Movant”), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

1. The Subchapter V Debtor / Debtor in Possession and his counsel have continuously failed to provide requested financial records to the Movant, even though Movant has requested the following documents at least six times:
  - a. Completed attachments B, C, and D to the Initial Reporting Requirements and Document Request form;
  - b. Evidence of one or more Debtor / Debtor in Possession’s accounts. In addition, the Debtor / Debtor in Possession has not filed Form 426 for the businesses listed on Schedule A/B; and
  - c. Form 426 for the businesses listed on Schedule A/B.
2. Debtor / Debtor in Possession failed to schedule a noticed hearing on the employment application of Debtor / Debtor in Possession’s Counsel, Mr. Johnston.
3. Debtor has failed to file the Monthly Operating Reports for July and August 2022.
4. There appears to be nonexempt assets or nonexempt equity in assets that can be liquidated and administered for the benefit of creditors and the estate in a Chapter 7 liquidation.

## **TRUSTEE’S STATEMENT**

Subchapter V Trustee, Walter R. Dahl (“Trustee”) filed a statement on October 22, 2022. Dckt. 60. Trustee states support for the U.S. Trustee’s motion, and recommends this Chapter 11, Subchapter V case be converted to a Chapter 7 case.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[.]; [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

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 to Dismiss or Convert the Chapter 11 case filed by Tracy Hope Davis (“the U.S. 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 the hearing on the Motion to Dismiss or Convert the Chapter 11 Bankruptcy Case is continued to December 15, 2022 at 2:00 p.m., pursuant to the court’s Order (Dckt. 77).

**Final Ruling: No appearance at the November 10, 2022 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 in Possession’s Attorney(s), and Office of the United States Trustee on September 15, 2022. By the court’s calculation, 56 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 Trustee Fees is granted.</b></p>
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Walter R. Dahl, the Chapter 11 Subchapter V Trustee (“Applicant”), makes a First and Final Request for the Allowance of Fees and Expenses in this case for trustee services provided.

Fees are requested for the period August 19, 2021, through November 10, 2022. Applicant was appointed as the Subchapter V Trustee on August 20, 2021. Dckt. 9. Applicant requests fees in the amount of \$5,633.25 and costs in the amount of \$154.50.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the trustee’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 trustee 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 trustee are “actual,” meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. A trustee must exercise good billing judgment with regard to the services provided because the court’s authorization to employ a trustee to work in a bankruptcy case does not give that trustee “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 case administration, claims administration and objections, fee and employment applications, preparation of and relating to the Plan and Disclosure Statement, and various itemized time and fee entries reflected on Exhibit A. Dckt. 105. Applicant also requests reimbursement for actual necessary expenses consisting of court calls. The court finds the services were beneficial to Client 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 4.9 hours in this category. Applicant's services included communication with the U.S. Trustee's personnel and the Debtor / Debtor in Possession's counsel, review of the Petition, Schedules and Statements, Status Reports, Proofs of Claim, and Notice of Substantial Consummation, an interview with Debtor / Debtor in Possession, and attendance at the Meeting of Creditors and status conferences.

Claims Administration and Objections: Applicant spent 0.5 hours in this category. Applicant, provided services including communication with J. Lewis, Creditors' counsel, regarding various Chapter 11 matters and a pre-petition lawsuit.

Fee and Employment Applications: Applicant spent 2.3 hours in this category. Applicant provided services including the preparation, filing, and serving of, the motion and supporting pleadings for first and final compensation for Subchapter V Trustee fee application, and attendance at the hearing regarding this motion.

Plan and Disclosure Statement: Applicant spent 8.6 hours in this category. Applicant provided services including the review of proposed plan of reorganization, communications regarding such, court appearances at multiple confirmation hearings, communications with K. Berry regarding reorganization plan issues, coordination and communication with Debtor / Debtor in Possession's counsel regarding the Plan, review of the modification to the Plan, and the Amended Plan, and all such related communication with J Gaitan, the U.S. Trustee's lawyer.

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 and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
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Walter R. Dahl, Subchapter V Trustee Services	11.5	\$435.00	\$5,002.50
Walter R. Dahl, Subchapter V Trustee, No Charge	1.9	\$0.00	\$0.00
Walter R. Dahl, Subchapter V Trustee, Travel Time (50% rate)	2.9	\$217.50	<u>\$630.75</u>
<b>Total Fees Requested in Application</b>			\$5,633.25

### **Adjustment to Hourly Rate/No Charge Services**

The court notes that the Subchapter V Trustee has a very reasonable (some would say modest) hourly rate charged for such an experienced attorney. In part, the court infers that this reasonable rate is used by the Subchapter V Trustee to help facilitate the progress of Subchapter V Cases and not have the Trustee's fees becoming a burden on the process.

As addressed below, the court does not allow for separate billings for attorneys and professionals using CourtCall to make appearances throughout the District. The court views that as a cost of business included in the attorney's or other professional's hourly rate.

Here, the court concludes that the Subchapter V Trustee, not appreciating the court requiring the CourtCall type expense to be included in the hourly rate, tweaked down his hourly rate a little too much.

For the time spent on this case, including the non-billed hours, that works out to be an effectively hourly rate of \$355.08 an hour (\$5787.75 fees/16.3 hours). For the billed time, 11.4 hours, the Subchapter V Trustee would need to increase his hourly rate from \$435.00 to \$448.43 to include the CourtCall expenses as part of the overhead included in the hourly rate.

Therefore, the court determines that for the services provided as in this Case by the Subchapter V Trustee the total fees allowed are \$5,787.75.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$154.50 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Cost</b>
CourtCall - Case Admin	\$83.25
CourtCall - Plan	\$71.25



<b>Total Costs Requested in Application</b>	\$154.50
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### **Attempting to Recover Costs for CourtCall**

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include \$154.50 for “CourtCall.”

While Applicant requested reimbursement for costs associated with making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to attend hearings via CourtCall is at the cost of the Applicant, or attorney appearing on Applicant’s behalf, included in the attorney’s hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing attorneys and trustees to market their legal skills (and generate fees from a much larger client base) over a much larger geographic area than was historically possible.

Therefore, since the only costs and expenses requested by Applicant are for CourtCall, Applicant is allowed costs for this Application.<sup>FN.1.</sup>

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FN. 1. The Subchapter V Trustee may question whether not having CourtCall as a cost to be recovered, rather than included in the hourly rate might lead to attorneys and other professionals over tweaking up their hourly rates, and in the end receiving excess monies to the detriment of creditors, debtors, and bankruptcy estates. The court’s first observation is that they can already do that, and so long as everyone has to play by the same rules, there will be competitive pressure to not inappropriately overcharge for an hourly rate.

Additionally, the Subchapter V Trustee is of the generation of attorneys who remember law firms charging, and overcharging, their clients for every nickle and dime item as “costs.” These were for some very basic services that the law firm had to have for the lawyers to do their “lawyer thing.” The court avoids the fights over what is an appropriate cost fights after the fact, by making it clear what constitutes recoverable costs (such as filing fees, mileage, printing costs, delivery costs (when pleadings and exhibits must be shipped to the court), and the like) and what are not recoverable (such as having a phone to speak with a client, having internet, having data base storage, and the like).

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

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 \$5,787.75 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Debtor / Debtor in Possession from the available Plan funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes Debtor / Debtor in Possession to pay 100% of the fees allowed by the court.

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

Fees	\$5,787.75
Costs and Expenses	\$0.00

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 (“Applicant”), the Chapter 11 Subchapter V 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 Walter R. Dahl is allowed the following fees and expenses as a professional of the Estate:

Walter R. Dahl, Subchapter V Trustee appointed by the U.S.  
Trustee,

Fees in the amount of \$5,787.75  
Expenses in the amount of \$0.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 for trustee services provided.

**IT IS FURTHER ORDERED** that the Debtor / Debtor in Possession is authorized to pay 100% of the fees and 100% of the 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 November 10, 2022 Hearing is required.**

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion (Dckt. 154), Amended Motion (Dckt. 160), and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2022. By the court’s calculation, 31 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).

Under the facts and circumstances of this Motion, the court shortens the time required for notice to the 31 days given.

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). The defaults of the non-responding parties and other parties in interest are entered.

**The Hearing on the Motion for Allowance of Professional Fees is continued to 10:30 a.m. on December 1, 2022.**

**Applicant shall file and serve supplemental pleadings on or before November 11, 2022, and Reply pleadings, if any, shall be filed and served on or before November 22, 2022.**

James D. Bielenberg, the Accountant (“Applicant”) for Twisted Oak Winery, LLC, the Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The court notes that Applicant’s motion is titled “First Amended First and Final Formal Application of James D. Bielenberg’s as CPA & Consultant to Debtor-In-Possession,” and cites Chapter 11 of the United States Code, including Sections 330 *and* 331. Dckt. 154. Therefore, the court treats this is a First Interim Request for fees pursuant to Section 331. 11 U.S.C. § 331.

Fees are requested for the period October 4, 2021, through July 31, 2022. The order of the court approving employment of Applicant was entered on October 20, 2021. Dckt. 33. Applicant requests fees in the amount of \$49,968.75 and costs in the amount of \$33.00.

## **UNITED STATES TRUSTEE’S OBJECTION**

Tracy Hope Davis, the United States Trustee, filed an Opposition to this Motion, via counsel, on October 27, 2022. Dckt. 171. The Opposition states that nearly all of Applicant’s time records lump multiple tasks into single billing entries, and therefore, the fees associated with these “lump entries” should be reduced by 20%, or \$8,953.75.

U.S. Trustee Davis states Applicant has not adequately specified specific dates of performance of services and all but three of Applicant’s time records combine multiple tasks into single billing entries.

## **REPLY FILED BY APPLICANT**

On November 8, 2022, Applicant filed a Reply to the U.S. Trustee’ Opposition. Dckt. 176. Applicant states that is conceded that the current fee applicant is deficient and requests that the court either deny the Applicant without prejudice or allow for the filing of supplemental pleadings to the current Application.

## **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 ten general categories consisting of (1) administrative, (2) asset sales, (3) bankruptcy work and activities related to petitions and filings, (4) lending group work, (5) assistance related to day-to-day operations, (6) real estate issues, (7) reorganization plan formulation and assistance with confirmation, (8) reporting and monitoring, (9) strategic planning, and (10) coordination with attorneys.

### **Time and Billing Records**

This court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged, in addition to the actual billing records. This has long been required by the Office of the U.S. Trustee, and it is nothing new for professionals in this District.

The task billing analysis requires only that the professional organize his or her task billing. The simpler the services provided, the easier it is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks performed from the raw billing records, the more evident the need for

Applicant to create the task billing analysis to provide the court, creditors, and U.S. Trustee with fair and proper disclosure of the services provided and fees being requested.

Additionally, the court finds it necessary for attorneys to provide their time and billing records so the court can see what legal services are asserted to be recoverable. Absent these records, the court has no ability to confirm whether the limited task billing provided is true, correct, reasonable, and awardable.

What Applicant chose to do instead was limit the information provided to the court. The Motion itself simply states the activities Applicant assisted with, with no breakdown of how many hours were performed in each category. The exhibits provided feature mere lump sum attorney's fee figures for several task areas, including monthly summary amounts for services rendered, Exhibits B and C, Dckt. 162, totaling \$49,968.75 in aggregate fees.<sup>FN. 1.</sup>

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FN.1. The court also notes that not all of Applicant's Exhibits complied with Local Rule 9004-2, which states, "[t]he exhibit document pages, including the index page, and any separator, cover, or divider sheets, shall be consecutively numbered and shall state the exhibit number/letter on the *first* page of each exhibit" (emphasis added). L.B.R. 9004-2 (d)(3).

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The six separately labeled records Applicant has provided as Exhibits A through E (dckt. 162), do not adequately disclose or specify the scope of services performed and when such services were rendered. Applicant purports to have included Daily Time logs as Exhibit B (dckt. 162, p. 4), yet there are no specific dates or time entries connected with any of the descriptions contained therein.

Exhibit C purports to separate time spent by Applicant in each service category. However, it appears Applicant has only billed for five (5) of the ten (10) categories mentioned in the Motion. Exhibit C does not reflect any hours being spent on (b) asset sales, (e) operations, (f) real estate, (g) reorganization plan, and (I) strategic planning, even though Applicant's motion asserts services performed in the aforementioned categories. Exhibit C, Dckt. 162, p. 15. Therefore, either the Motion does not accurately state the tasks Applicant assisted on, or the exhibits are inaccurate.

Further, Exhibit C lists "working with attorneys" as one of the categories. It is unclear what work was performed by Applicant and what tasks they were assisting.

Applicant's Attorney is experienced in bankruptcy proceedings. Such an attorney well knows, or should know that a motion for compensation and supporting pleadings should clearly and accurately reflect the amount of time an applicant worked for the benefit of the estate. Additionally, Applicant's Attorney should know billing records are necessary for a court to make an informed and intelligent decision as a request for professional fees. Such an experienced attorney also knows that such billing records must be adequately specific to allow the court to make its determination as to the allowance of fees.

### **Attempting to Recover Inappropriate Costs for CourtCall**

In addition, Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone,

email, and facsimile; and secretarial support. The costs requested by Applicant include \$33.00 for “CourtCall.”

While Applicant requested reimbursement for costs associated with making telephonic CourtCall Appearances, the court does not permit such reimbursements and therefore declines to award Applicant CourtCall costs. The decision to attend hearings via CourtCall is at the cost of the Applicant, included in the professional’s hourly rate for the services.

Here, Applicant could have appeared in person, but probably recognized how even with the associated costs it is more economically efficient to attend remotely. CourtCall is a very effective tool allowing professionals to market their skills (and generate fees from a much larger client base).

Therefore, since the only costs and expenses requested by Applicant are for CourtCall, Applicant is not entitled to received any amount for costs.

### **Continuance of Hearing**

The court continues the hearing, rather than denying the Application without prejudice, to afford Applicant the opportunity to provide the court, U.S. Trustee, and other parties in interest requesting the information with the necessary raw billing records and task billing analysis.

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 Professional Fees filed by James D. Bielenberg (“Applicant”), Accountant for the Chapter 11 Debtor / Debtor in Possession, having been presented to the court, no task billing analysis having been provided in support of the Application, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Hearing on the Motion for Allowance of Professional Fees is continued to **10:30 a.m. on December 1, 2022.**

**IT IS FURTHER ORDERED** that Applicant shall file and serve supplemental pleadings on or before November 11, 2022, and Reply pleadings, if any, shall be filed and served on or before November 22, 2022.

In the Supplemental Pleadings Applicant shall clarify whether the Application is being made for interest allowance of fees and costs, 11 U.S.C. § 331, for which further final approval would be required; or whether this is a final fee application pursuant to 11 U.S.C. § 330.