

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

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

**December 1, 2022 at 10:30 a.m.**

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1. <a href="#"><u>21-90484</u></a> -E-11 <a href="#"><u>BSH</u></a> -7  Subchapter V  1 thru 2	<b>TWISTED OAK WINERY, LLC</b> <b>Brian Haddix</b>	<b>CONTINUED AMENDED MOTION FOR COMPENSATION FOR JAMES D. BIELENBERG, ACCOUNTANT(S) 10-10-22 <a href="#"><u>160</u></a></b>
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**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 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.

<b>The Motion for Allowance of Professional Fees is continued to <span style="color:red">XXXXXXXXXXXX</span></b>
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James D. Bielenberg, the Accountant (“Applicant”) for Twisted Oak Winery, LLC, the Debtor / 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.

## **NOVEMBER 11, 2022 HEARING**

### **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.

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.

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.

## **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.

## **SUPPLEMENTAL PLEADINGS**

### **November 11, 2022 Supplemental to Application**

Applicant filed a Supplement to First and Final Formal Application for Professional Fees (“Supplement”) stating that Applicant removes his request for reimbursement of expenses. Dckt. 183.

### **November 11, 2022 Supplemental Exhibits**

Applicant filed Supplemental Exhibits on November 11, 2022. Dckt. 182. The exhibits provide a Daily Time Log (Exhibit F) and Task Billing Summary (Exhibit G). From review of the exhibits, the court has adequate evidence to make an informed and intelligent decision as a request for professional fees.

### **U.S. Trustee’s Supplemental Objection**

The U.S. Trustee filed a supplemental objection on November 22, 2022. Dckt. 187. The U.S. Trustee indicates the following concerns:

1. The U.S. Trustee continues to assert that there are \$8,953.75 in fees which are in the form of block billings for which the services are not sufficiently detailed. This is incorporated from the initial Objection (Dckt. 171), which is stated as follows:

11. The fees associated with the “lumped” time entries total \$44,768.75 (\$49,968.75 in total fees minus \$5,200 for the time entries on the July 18, 2022 invoice that are not “lumped”). See note 1, *supra*.

1 The three entries are set forth on the invoice for July 18, 2022. See ECF No. 162, at p. 13 of 18. The associated fees are \$5,200. *Id.*

12. “Lumping” multiple services into a single billing entry is “universally disapproved” by bankruptcy courts. *See In re Thomas*, 2009 WL 7751299, at \*5 (B.A.P. 9th Cir. July 6, 2009); *In re Duarte*, 2020 WL 6821723, at \*3 (Bankr. D. Ariz. Aug. 4, 2020); *In re Prior*, 2015 WL 5299459, at \*2 (Bankr. E.D. Cal. Sept. 9, 2015).

16. Accordingly, the fees associated with the Applicant’s “lumped” time entries should be reduced by 20% or \$8,953.75. *Cf. In re Stewart*, 2008 WL 8462960, at \*6 (B.A.P. 9th Cir. Mar. 14, 2008) (bankruptcy court’s reduction of time entries by 20% for lumping was not an abuse of discretion).

2. It is not clear whether the Daily Time Log supplied as Exhibit F, Dckt. 182, is contemporaneous, or whether Applicant reconstructed the time records.
3. The Debtor / Debtor in Possession only prepared eight monthly operating reports. Therefore, the 101.5 hours of fees for this category may be excessive.

The U.S. Trustee raises valid points for the court to consider and Applicant to address. Applicant has not provided his declaration to explain, or authenticate, the billing exhibits provided to document the time for which the fees are requested.

Though the court could require Applicant the opportunity to provide his declaration authenticating the exhibits, given that this case has been successfully prosecuted to a confirmed plan, which process has been a bit bumpy at times, such further documentation will not be required. These documents have been provided by Applicant subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, from which there can be “mere” corrective sanctions issued by the bankruptcy judge, as well as corrective and punitive sanctions issued by the Chief District Court Judge (or other District Court Judge whom such a matter may be assigned).

Here, the information provided subject to the Rule 9011 Certifications provide the court with sufficient information IN THIS CASE. It is clear that time and effort has been expended to provide the court with the detailed information.

Lump Billings, Records,  
and Monthly Operating Reports

As stated by the U.S. Trustee, the original support documents consisted of gross lump sum billing. The Supplemental Documents provide detailed billings, identifying by task area and specific charge. Clearly a lot of time and effort went into generating the Supplemental Documents, which on their face appear to be credible.

As noted above, the court is accepting these Supplemental Records, IT THIS CASE.

With respect to the 101.5 hours of professional accountant time spent for the eight Monthly Operating Reports, that clearly appears excessive. The court notes that there are several adjustments made to “multiple client financial iterations.”

The court surmises that 101.5 hours have been billed for accounting services for two main reasons. First, “challenges” created by the Debtor and how the management of Debtor operates the business. Second, that the Applicant ended up doing bookkeeping or other data entry clerical work (there being no charges by any clerical person to input data into the Monthly Operating Form.

In going through the line item billing, the court identifies 83.5 net hours (after allowing for a 5.00 hour downward adjustment made by Applicant). At \$325 an hour, that totals \$27,137.50.

The court notes that Applicant has chosen to bill for his services in quarter hour increments (.25) rather than the one-tenth hour (.10) increments used for professionals in bankruptcy cases. Quarter hour

minimum billing increments can lead to excessive billings. For example, if the professional does the actual work and bills in quarter hour increments, a billing abnormality as show below could exist:

Actual time	Tenth Hour Increment	Quarter Hour Increment
.4	.4	.5
.6	.6	.75
.1	.1	.25
.8	.8	1
1.3	1.3	1.5
.2	.2	.25
.5	.5	.5
2.1	2.1	2.25
.3	.3	.5
.6	.6	.75
.4	.4	.5
=====	=====	=====
7.3	7.3	8.75

Thus, in the example above, for one day of billings, there would be a 20% enhancement by using quarter hour billings. With Applicant having billed for 153.75 hours, that could represent 25 hours of quarterly “rounded up” hours in excess of actual time. Those 25 hours represent \$8,125.

### **FEES REQUESTED AND AWARDED**

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

Administrative: Applicant spent 22.00 hours in this category. Applicant provide basic administrative tasks and correspondence for the Debtor

Bankruptcy: Applicant spent 18.25 hours in this category. Applicant developed a plan and financial projections for Debtor, communicated with Debtor’s attorney, and discussed various bankruptcy related issues with professionals and the court.

Reporting / Monitoring: Applicant spent 101.50 hours in this category. Applicant produced Monthly Operating Reports and corresponded with professionals and Debtor's attorney.

Working with Attorneys: Applicant spent 12.00 hours in this category. Applicant corresponded and assisted attorneys regarding various matters.

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>
James D. Bielenberg, Accountant	153.75	\$325.00	<u>\$49,968.75</u>
<b>Total Fees for Period of Application</b>			\$49,968.75

The court continues the matter to **xxxxxx, xx, xxxx**.

The court notes, though the court could reduce the requested fees by the 20% as requested by the U.S. Trustee, under the totality of the circumstances, a (\$4,000) reduction would be appropriate for an award of reasonable fees for the professional services provided. With a (\$4,000) reduction, the court would approve First and Final Fees in the amount of \$45,968.75 pursuant to 11 U.S.C. § 330 to be paid by Debtor / Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan. No costs would be allowed (the request for costs having been withdrawn by Applicant)

The court will make the determination whether the hourly rates are reasonable and whether Applicant mostly effectively used appropriate rates for the services provided at the continued hearing date.

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 **xxxxxx, xx, xxxx**



Subchapter V

**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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 11 Trustee, creditors holding the twenty (20) largest unsecured claims, creditors, and Office of the United States Trustee on November 10, 2022. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

**Service Issues**

The Certificate of Service filed on November 10, 2022 (Dckt. 181) is not signed. It appears that this may have arisen due to a technological error. The U.S. Small Business Administrator, though filing a proof of claim, is not listed as having been served with this Motion.

Additionally, the Certificate of Service (Sec. 4) does not state that the Notice of Hearing was served.

At the hearing, **XXXXXXX**

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 11 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. At the hearing, -----

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<b>The Motion for Allowance of Professional Fees is granted.</b>
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Brian S. Haddix, the Attorney (“Applicant”) for Twisted Oak Winery, LLC, the Debtor / Debtor in Possession (“Client”), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 5, 2021 through November 10, 2022. The order of the court approving employment of Applicant was entered on October 20, 2021. Dckt. 32. Applicant requests fees in the amount of \$53,320.00 and costs in the amount of \$115.40.

## **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 case administration, asset analysis, recovery, and disposition, and general services and law an motion practice required of a bankruptcy attorney. Summary of Services. 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 28.00 hours in this category. Applicant handled “coordination and compliance activities, including preparation of statement of financial affairs, schedules, list of contracts, U.S. Trustee interim statements and operating reports, contacts with the U.S. Trustee, general creditor inquiries.”

Asset Analysis and Recovery: Applicant spent 5.90 hours in this category. Applicant prepared the initial Debtor interview questionnaire and required documents.

Asset Disposition: Applicant spent .10 hours in this category. Applicant discussed options with Debtor / Debtor in Possession regarding sale, lease, and use of estate property.

Fee and Employment Applications: Applicant spent 13.70 hours in this category. Applicant prepared for and attending the § 341(a) meeting of creditors.

Fee and Employment Objections: Applicant spent 7.80 hours in this category. Applicant prepared motion and fee applications for themselves and others.

Financing: Applicant spent 5.60 hours in this category. Applicant represented to Debtor / Debtor in Possession issues regarding negotiations, analysis, and other matters regarding use of cash collateral.

Claims Administration and Objections: Applicant spent 12.70 hours in this category. Applicant prepared and filed an objection to Mechanics Bank's proof of claim as well as attended hearings on the objection. Parties came into an agreement and the objection was withdrawn.

Plan and Disclosure Statement: Applicant spent 54.60 hours in this category. Applicant provided extensive assistance and compliance with the plan of reorganization.

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>
Brian Haddix, Attorney	130.80	\$400.00	<u>\$52,320.00</u>
<b>Total Fees for Period of Application</b>			\$52,320.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$115.40 pursuant to this application. Applicant states the expenses are listed in Exhibit F, however, no Exhibit F is attached. *See* Exhibits A-E, Dckt. 180. In Applicant's Motion, Applicant states these fees are solely for Court Call costs associated with Applicant's Client wanting to attend three hearings via telephone. Even Applicant provided the invoices as an exhibit, 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 attorney included in the hourly rate for the services, or their client who is attending.

Here, Applicant's Client could have appeared in person, but probably recognized how even with the associated costs it is more economically and practicably efficient to attend remotely. CourtCall is a very effective tool allowing parties to be present at hearings with the convenience of not having to travel to them.

The request for expenses is, therefore, denied.

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

#### **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 \$52,320.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Debtor / Debtor in Possession from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

#### **Costs**

The court finds that Applicant is not entitled to the \$115.40 in costs and expenses associated with their Client's attendance of hearings via Court Call.

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

Fees	\$52,320.00
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 Brian S. Haddix ("Applicant"), Attorney for Twisted Oak Winery, LLC, the Debtor / Debtor in Possession, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Brian S. Haddix is allowed the following fees and expenses as a professional of the Estate:

Brian S. Haddix, Professional employed by the Debtor / Debtor in Possession

Fees in the amount of \$52,320.00  
Expenses in the amount of \$0.00,

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

**IT IS FURTHER ORDERED** that Debtor/Plan Administrator is authorized to pay 100% of the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

# FINAL RULINGS

3. [22-90214-E-7](#) JULIETA GUDINO-SANCHEZ CONTINUED TRUSTEE'S MOTION TO  
Travis Poteat DISMISS FOR FAILURE TO APPEAR  
AT SEC. 341(A) MEETING OF  
CREDITORS  
10-14-22 [\[21\]](#)

**Final Ruling: No appearance at the December 1 2022 Hearing is required.**  
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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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The Motion to Dismiss is dismissed without prejudice.**

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, Debtor's counsel addressed the pleading form requirements and noted that the instructions included with the Trustee's Notice of Motion may cause confusion that it is required that all of the responsive pleadings be included in one document, notwithstanding the requirements of the Local Bankruptcy Rules, which state:

Instructions: To request a hearing on the Trustee's Motion, a completed, originally signed Notice of Hearing and Opposition with any additional pages attached must be filed with the Clerk of Court at the address shown above not later than 14 days before the hearing date, and copies must be received by the Trustee and the United States Trustee not later than 14 days before the hearing date. If the completed Notice of Hearing and Opposition is filed by a party other than the absent debtor(s), copies of the completed Notice of Hearing and Opposition with any additional pages attached must also be received by the debtor(s) and, if represented by legal counsel, by the attorney for the debtor(s) not later than 14 days before the hearing date.

Dckt. 16 at 2. As suspected by the court, there was something that caused confusion for Debtor's counsel.

### **November 15, 2022 341 Meeting**

On November 15, 2022, Trustee filed a docket entry indicating Debtor and Debtor's counsel appeared at the 341 Meeting of Creditors and it was concluded on November 15, 2022. Given this resolves Trustee's reason seeking dismissal, the Motion is dismissed without prejudice.

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 Motion to Dismiss is dismissed without prejudice.

**CLOSED: 10/21/2022**

**Final Ruling:** No appearance at the December 1, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Creditor's as stated on the Certificate of Service on November 9, 2022. The court computes that 22 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: \$11.50 due on October 24, 2022.

**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 subjection 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.

**Final Ruling:** No appearance at the December 1, 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 creditors, and Office of the United States Trustee on November 4, 2022. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Motion to Vacation Discharge 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 to Vacate is granted, and the Order Discharging Debtor (Dckt. 33) is vacated, with the Discharge not re-entered by the Clerk until on or after January 31, 2023.**

Monique Rachele Digges ("Debtor") filed the instant case on March 14, 2022. Dckt. 1. An Order Discharging Debtor was entered on September 15, 2022. Dckt. 33.

This is Debtor's second Motion to Vacate. The first came after Debtor notified counsel Brian S. Haddix ("Debtor's Counsel"), that she desired and intended to enter into a reaffirmation agreement for her only motor vehicle which she disclosed in her schedules. Dckt. 21. Debtor's Counsel did not timely file the reaffirmation due to outside circumstances. The court found sufficient grounds for excusable neglect and granted Debtor's request to vacate the discharge. However, on September 15, 2022, a second discharge was entered. Dckt. 33.

On November 4, 2022, Debtor filed this instant Motion to Vacate. Dckt. 46. Debtor again claims excusable neglect on behalf of Debtor's Counsel. Motion and Memorandum of Points and Authorities, Dckts. 46, 48. Debtor's Counsel filed a Declaration in support of this Motion, providing grounds for excusable neglect. Dckt. 51.

## APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

## DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere*

*Life Ins. Co.*, 101 F. App'x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Debtor states she seeks to vacate the Order Discharging Debtor to enter into a reaffirmation agreement for her motor vehicle. Courts have been divided on whether a discharge can or should be vacated in order to reaffirm debt. *In re Roderick*, 425 B.R. 556, 568 (Bankr. E.D. Cal. 2010); *Compare In re Edwards*, 1999 BNH 25, 236 B.R. 124, 128, *In re Solomon*, 15 B.R. 105, 106 (Bankr. E.D. Pa. 1981), *In re Long*, 22 B.R. 152, 154 (Bankr. D. Me. 1982), *with Rigal v. Fleet Mortg. Corp. (In re Rigal)*, 254 B.R. 145, 148 (Bankr. S.D. Tex. 2000), *In re Judson*, 586 B.R. 771, 773 (Bankr. C.D. Cal. 2018) (improper to vacate discharge to approve reaffirmation agreement six years after discharge was entered). Courts permitting vacating discharge to reaffirm debt allow so, so long as it complies with the Rule 60(b)(1) analysis.

This court agrees with courts exercising equitable powers to vacate discharge to allow entry of a reaffirmation agreement.

Debtor's Motion was filed on November 4, 2022, a little over one month after receiving their second discharge on September 15, 2022. Order, Dckt. 33. No party has objected to Debtor's Motion. Additionally, Debtor suggests they will suffer hardship, recognizing their vehicle may be vulnerable to repossession. Declaration, Dckt. 49 at 2 ¶ 5. Debtor additionally states their access to creditor's website for purpose of making payments or obtaining relevant information is limited. *Id.* Also, payments will not be reported to credit reporting agencies which is important for Debtor. *Id.*

Vacating the Debtor's discharge will result in no prejudice to the Creditor, but would seriously prejudice Debtor. Both Creditor and Debtor would likely prefer Debtor's discharge be vacated to enter a reaffirmation agreement. Additionally, vacating the discharge will allow Debtor to reaffirm the debt and keep their vehicle, which is important for Debtor's "fresh start." Also, it was not the culpable conduct of Debtor which led to the entry of discharge. Rather, Debtor and Debtor's Counsel indicates excusable neglect on behalf of Debtor's Counsel.

Therefore, in light of the foregoing, the Motion is granted, and the Order Discharging Debtor (Dckt. 33) is vacated.

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 Vacate filed by Monique Rachele Digges ("Debtor") 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 order Discharging Debtor (Dckt. 33) is vacated.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall re-enter the discharge for this Debtor on or after **January 31, 2023**.