

1 the only offer of proof made by him shows two W-2s for 2023 from the Debtor: one
2 for wages of \$107,000.03 and one for \$29,512.99. Together these W-2s total
3 \$136,513.02 for 2023 – far less than the \$195,000 which he stated – under penalty
4 of perjury – that he received from the Debtor in 2023. It is also far less than what
5 he is requesting in the instant Notice. These contradictory amounts must be
6 explained because if the Debtor only paid Mr. Thomson \$136,513.02 in 2023 (as the
7 W-2s demonstrate), then he is asking this court to approve an unsubstantiated post-
8 petition raise from a prepetition salary. Until the Debtor successfully explains this
9 discrepancy and reason for a post-petition increase in compensation, no
10 compensation should be approved.

11 2. The amount of compensation requested - \$180,000 - exceeds the total
12 cash the Debtor has on hand at the moment (\$178,442.95). It also approaches the
13 total revenue the Debtor has collected in 2024 to date - which is \$209,133.13. See
14 Statement of Financial Affairs, ECF 13, at p. 38. Neither the Debtor nor the
15 Applicant have made any offer of proof showing what the Debtor can expect in
16 revenues that would be sufficient to pay the proposed compensation. As set forth in
17 the accompanying declaration of Brian Last (“Last Decl.”), President and CEO of
18 Arcadian Vanguard, the Debtor fired all of its advertising sales department
19 employees pre-petition, and many of the Debtor’s other podcast clients (in positions
20 similar to that of Arcadian Vanguard), have not done business with the Debtor since
21 May 2023 or earlier. It is respectfully submitted that the Debtor has very little if
22 any revenues it can expect in 2024 which could support or justify the compensation
23 which Mr. Thomson requests. See paragraphs 2 and 3 of the Last Decl. The Debtor
24 should be required to demonstrate a reasonable likelihood and estimate of
25 revenues.²

26 3. Other than the cash (as set forth above), the only other assets listed by
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² At page 14 of the schedules (ECF 13) the Debtor lists, as an asset, a “Finder’s Fee Agreement with Courtside Group, Inc.” This entity is listed with an unknown value, is not included on Schedule G, and no other information is known.

1 the Debtor are accounts receivable (some of which are uncollectible) totaling about
2 \$83,000. ECF #13, p. 15. The Debtor lists no unexpired executory contracts. This
3 further highlights the likely lack of revenue or potential for future revenue issue.

4 4. The schedules show that the Debtor paid attorney's fees in excess of
5 \$152,000 within the 90 days prior to the Petition Date. See ECF #13, pp. 39 and 42
6 (comprised of over \$83,000 to EPGR and Glaser Weil, and \$69,335.50 to its current
7 bankruptcy counsel). This amount does not include the sum of \$21,380 the Debtor
8 paid to Levene Neal in 2023 for bankruptcy advice. ECF #13, SOFA, para. 11, p.
9 42. Yet, in addition to not paying its clients, the Debtor also failed to pay over
10 \$72,000 in priority tax claims in 2023. See ECF #13, p. 19. The Debtor should
11 explain why compensation is appropriate under these circumstances.

12 5. Mr. Thomson appears to be the sole person controlling the books and
13 records of the Debtor at this time. He is also the 99% shareholder. See ECF #13, p.
14 37 (signed as CEO of the Debtor), see also p. 50.

15 6. Finally, as Mr. Last, a member of the podcasting community since
16 2015, states in the accompanying declaration, Mr. Thomson (through an email from
17 him in May 2023 and in an email from the Debtor's lawyer, Neil Sacker, in June
18 2023) notified Arcadian Vanguard and others in May 2023 that it would be filing
19 bankruptcy and unable to pay them on undisputed claims which are estimated to
20 exceed \$6.8 million (see ECF #13, p. 7). Arcadian Vanguard was also informed
21 that if it did not sign new contracts – with bad terms – with PodcastOne (prior to its
22 becoming a publicly-traded company), then the Debtor's client creditors – including
23 Arcadian Vanguard – would receive nothing on their claims because the Debtor
24 would shut down and go out of business. Last Decl., ¶ 3.

25 Local Rule 2014-1 provides the mechanism for a request for insider
26 compensation and includes the following:

27 (3) Payment of Insider Compensation. An insider may receive compensation or
28 other remuneration from the estate if no objection is received within 14 days
after service of the Notice. An insider may receive an increase in the amount of

1 insider compensation or other remuneration previously approved if no objection
2 is received within 30 days after service of the Notice.

3 (4) Objection and Notice of Hearing. If an objection is timely received,
4 the debtor ***must*** set the matter for hearing. The debtor must file a true and
5 correct copy of the Notice, objection, and the original notice of hearing. The
6 debtor must serve not less than 21 days notice of the date and time of the
7 hearing on the objecting party and the United States trustee.

8 Arcadian Vanguard submits that the burden is on the Debtor or Mr. Thomson,
9 or both of them, to establish the reasonableness of the wages requested, as well as the
10 ability of the Debtor to pay it. The Debtor's income historically came from the
11 present of advertising revenues its podcast clients generated; that source appears to
12 have dried up. See the Last Decl., ¶¶ 4-5. As a result, until this requirement is
13 satisfied and additional information provided, it is premature to allow any
14 compensation to Mr. Thomson.

15 Dated: April 3, 2024

Respectfully submitted,
FENNEMORE, LLP

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21 Arcadian Vanguard
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