

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: JANUARY 4, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-23117](#)-A-7 **IN RE: ESTEE FLORES**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 CASE
WITHOUT ENTRY OF DISCHARGE AND/OR MOTION TO EXTEND TIME TO
FILE A MOTION TO DISMISS CASE UNDER SEC. 707(B)
12-3-2021 [[21](#)]

GEOFF WIGGS/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 7 Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The United States trustee seeks dismissal of this chapter 7 case pursuant to the terms of a stipulation with the debtor. The U.S. Trustee is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumed abuse) and/or 707(b)(3) (i.e., bad faith and/or totality of the circumstances abuse). The debtor indicated that she does not wish to defend the U.S. Trustee's allegations and has stipulated to dismissal of this chapter 7 bankruptcy case without discharge, ECF No. 20. The parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the debtor's right to dismiss the case.

CASE DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The court finds that cause exists to dismiss the case and that the dismissal poses no prejudice to creditors. The court grants the motion to dismiss.

2. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-1](#)

MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS ATTORNEY(S)
12-14-2021 [[17](#)]

MARK WOLFF/ATTY. FOR DBT.
J. HOPPER/ATTY. FOR MV.

Tentative Ruling

Application: Approval of Employment

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved

Order: Prepared by applicant pursuant to the instructions below

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

J. Michael Hopper, the chapter 7 trustee, seeks an order approving his employment of Desmond, Nolan, Livaich & Cunningham (DNLC) as his general counsel, pursuant to a hybrid fee agreement, ECF No. 20.

The trustee anticipates commencing an adversary proceeding to void the transfer of property located at 2518 U Street, Sacramento, California. The debtor claims a 5% interest in the property.

The hybrid fee agreement provides for a sliding scale contingent fee for any recovery of more than 5% of the U Street property.

The court may approve employment of professional persons who "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person"). From the factual information provided in the motion and supporting papers, the court will approve the employment.

The order shall contain the following provision: "Nothing contained herein shall be construed to approve any provision of any agreement between DNLC and the estate for indemnification, arbitration, choice of venue, jurisdiction, jury waiver, limitation of damages, or similar provision." The order shall also state its effective date, which date shall be 30 days before the date the employment application was filed except that the effective date shall not precede the petition date.

3. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-2](#)

MOTION TO ABANDON
12-14-2021 [22]

MARK WOLFF/ATTY. FOR DBT.
J. HOPPER/ATTY. FOR MV.

Tentative Ruling

Motion: Authorize Trustee's Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted only as to the business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: 2286 Del Monte LLC; D&J Beneficial Holdings, LLC; Norcal Green Ventures, LLC; Midtown Supply, LLC; Midtown Manufacturing

Value: \$0

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee moves for an order authorizing his abandonment of the bankruptcy estate's interest in the businesses described in the motion, ECF No. 22.

The movant bears the burden of proof. *In re Pilz Compact Disc., Inc.*, 229 B.R. 630 (Bankr. E.D. Pa. 1999) (Chapter 7 trustee). "[B]urdensome to the estate" means "consumes the resources and drains the income of the estate." *In re Smith-Douglass, Inc.*, 856 F.2d 12, 16 (4th Cir. 1988). "[O]f inconsequential value and benefit to the estate" refers to assets not likely to be liquidated for the benefit of creditors. 11 U.S.C. § 704(a)(1); *Matter of Taxman Clothing Co.*, 49 F3d 310, 315 (7th Cir. 1995) (Chapter 7 trustee has no duty to liquidate assets where costs of doing so likely to exceed asset's value). Of inconsequential value and benefit to the estate includes assets that (1) have no equity (including post-petition appreciation), *In re Viet Vu*, 245 B.R. 644 (9th Cir. BAP 2000); and (2) assets with equity, which has been wholly and properly exempted by the debtor. *In re Montanaro*, 307 B.R. 194 (Bankr. E.D. Cal. 2004).

11 U.S.C. § 554(a)

"After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a).

The trustee seeks to abandon the estate's interest in the businesses because of the potential liabilities associated with the operation of a cannabis manufacturing facility. Under the Controlled Substances Act, 21 U.S.C. § 812, the manufacture, distribution or possession of marijuana is a criminal offense, 21 U.S.C. §§ 841(a)(1), 844(a).

In 2018 Norcal Green Ventures, LLC proposed to initiate the development of a medical cannabis concentrate manufacturing facility located at 2286 Del Monte Street, ECF No. 22, 2:18-23, ECF No. 25. D&J Beneficial Holdings, LLC and 2286 Del Monte, LLC are also associated with the proposed cannabis manufacturing facility. The trustee also states that he believes that Midtown Supply, LLC, and Midtown Manufacturing were also involved in the operation of a cannabis manufacturing facility, ECF No. 24, 2:17-18.

The assets described above are either burdensome to the estate or of inconsequential value to the estate. An order authorizing the trustee's abandonment of such assets is warranted. The order will authorize abandonment of only the assets that are described in the motion.

4. [12-24048](#)-A-7 **IN RE: ALBERTO/ROSA CORTEZ**
[MS-1](#)

MOTION TO AVOID LIEN OF SPRINGLEAF FINANCIAL SERVICES, INC.
12-3-2021 [[31](#)]

MARK SHMORGON/ATTY. FOR DBT.
DEBTORS DISCHARGED: 06/11/2012

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$8,198.13 - Springleaf Financial Services, Inc.

All Other Liens:

-Deed of Trust, Chase \$355,535.00

Exemption: \$1.00

Value of Property: \$168,400.00

Subject Property: 1213 Donner-Pass Road, Vallejo, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true.

TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

The debtors seek an order avoiding the judicial lien of Springleaf Financial Services, Inc.

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

5. [21-23948](#)-A-7 **IN RE: JOSEPH GODSIL**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-6-2021 [[14](#)]

CATHERINE KING/ATTY. FOR DBT.
12/8/21 FILING FEE PAID \$338

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

6. [21-23056](#)-A-7 **IN RE: RANDI HARRY AND SAMUEL BALSLEY**
[JMH-1](#)

MOTION TO EMPLOY WEST AUCTIONS, INC. AS AUCTIONEER,
AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND
AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
12-7-2021 [16]

SETH HANSON/ATTY. FOR DBT.
J. HOPPER/ATTY. FOR MV.

Final Ruling

Motion: Sell Property and Compensate Auctioneer
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Prepared by moving party

Property: 2003 50th Anniversary Edition Convertible Chevrolet
Corvette; 812 Bottles of Wine; Wine Enthusiast Wine Cooler
Sale Type: Public auction
Auctioneer: West Auctions, Inc.
Fees Allowed: 15% of gross sale proceeds
Costs Allowed: actual, not to exceed \$8,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee seeks approval under 11 U.S.C. § 363(b) to sell the following assets at auction: 2003 50th Anniversary Edition Convertible Chevrolet Corvette; 812 Bottles of Wine; Wine Enthusiast Wine Cooler.

The trustee also requests that the court approve the employment of West Auctions, Inc. to conduct the auction and for the allowance of compensation to West Auctions Inc. as follows: 15% of the gross sale proceeds; and in addition, reimbursement for expenses in an amount not to exceed \$8,000.00.

The trustee further requests that the 14 day stay period imposed by Fed. R. Bankr. P. 6004(h) be waived.

SECTION 363(b) SALE

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court

will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

SECTION 328(a) EMPLOYMENT AND COMPENSATION

The Chapter 7 trustee may employ an auctioneer that does not hold or represent an interest adverse to the estate and that is disinterested. 11 U.S.C. §§ 101(14), 327(a). The auctioneer satisfies the requirements of § 327(a), and the court will approve the auctioneer's employment.

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an auctioneer. Section 328(a) authorizes employment of a professional on any reasonable terms and conditions of employment. Such reasonable terms include a fixed or percentage fee basis.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

7. [20-24259](#)-A-7 **IN RE: NESTOR/MARIA QUILATES**
[UST-1](#)

MOTION FOR DENIAL OF DISCHARGE OF DEBTOR UNDER 11 U.S.C.
SECTION 727(A)
11-18-2021 [[136](#)]

ARASTO FARASAD/ATTY. FOR DBT.
JORGE GAITAN/ATTY. FOR MV.

Final Ruling

Motion: Objection to Discharge

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Sustained

Order: Civil minute order

Instant Chapter 7 Petition Filed: September 4, 2020

Previous Chapter: 7

Previous Petition Filed: October 23, 2019

Previous Discharge: August 20, 2020

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The United States trustee has objected to Debtor Nestor Geoffrey D. Quilates' discharge in this case citing the debtor(s) ineligibility pursuant to 11 U.S.C. §727(a) (8).

OBJECTION TO DISCHARGE - 11 U.S.C. § 727(a) (8)

11 U.S.C. § 727(a) (8) provides that the court shall grant the debtor a discharge, unless...the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

...

11 U.S.C.A. § 727(a) (8).

Because less than 8 years has passed since the filing of debtor(s) previous chapter 7 case on October 23, 2019, the debtor is not eligible for a discharge in this chapter 7 case. The court will sustain the United States trustee's objection to discharge.

CIVIL MINUTE ORDER

The court finds that the debtor is not entitled to a discharge in this case. The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The United States Trustee's Objection to Discharge has been presented to the court. Having entered the default of the debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained; and

IT IS FURTHER ORDERED that the clerk shall not enter a discharge in this case as to Debtor Nestor Geoffrey D. Quilates.

8. [21-23366](#)-A-7 **IN RE: AARON WARE**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
12-14-2021 [\[20\]](#)

Final Ruling

The fee having been paid in full, the order to show cause is discharged.

9. [21-22976](#)-A-7 **IN RE: THE DESIGN BUILD COMPANY, LLC**
[DNL-7](#)

MOTION TO SELL
12-7-2021 [[94](#)]

ANTHONY ASEBEDO/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Motion to Sell

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: Estate's Interest in claims against Ray Conway and Emily Conway, Sonoma County Superior Court Case #S-CV-267759.

Buyer: Ray Conway and Emily Conway

Price: \$5,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee, J. Michael Hopper, seeks an order under 11 U.S.C. § 363(b)(1) and Fed. R. Bankr. P. 9019(a) approving the sale of the bankruptcy estate's interest in claims against Ray Conway and Emily Conway by way of Sonoma County Superior Court Case #S-CV-267759. The purchasers of the claim are Ray and Emily Conway. The purchase price is \$5,000.00. The trustee further requests waiver of the 14 day stay of Fed. R. Bankr. P. 6004(h).

BACKGROUND

The debtor is the plaintiff and the Conways are defendants in the litigation referenced in the preceding paragraph. The Conways filed a cross complaint against the debtor in the same proceeding. The debtor's insurance carrier has funded the defense of the defect claim and has declined the chapter 7 trustee's invitation to purchase the litigation claims, ECF No 94, 2:20-22.

The trustee has had extensive contact with the attorneys representing the debtor and the Conways in this litigation, *id.*, 2:25-28. The funds on hand in the estate aggregate approximately \$33,686.50, *id.*, 2:15.

After conducting his investigation, the trustee believes that the fair market value of the litigation claims is approximately \$5,000.00 because of the uncertainty that he will prevail; the

considerable costs of litigation and the risk of substantial attorney fees and costs. See *Id.*, 3:16-20.

The trustee has entered into a sale agreement with the Conways for their purchase of the estate's interest in the claims that have been asserted, or could be asserted, by the debtor against the Conways by way of the complaint in Sonoma County Superior Court Case #S-CV-267759.

APPROVAL OF SALE

The A & C Properties factors apply to the sale of a lawsuit under § 363(b)(1) to a defendant in such lawsuit. See *In re Lahijani*, 325 B.R. at 290. In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The court also finds that the "dynamics of the particular situation" warrant formal sale procedures with overbidding. Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1). To sell property under § 363(b)(1), the movant must articulate a business justification for the sale. *In re Lionel Corporation*, 722 F.2d 1063, 1071 (2d Cir. 1983). Sale is proper in one of three ways: (1) sale through confirmed plan, 11 U.S.C. §§ 1123(a)(5)(D), 1322(b)(11); (2) public auction, Fed. R. Bankr. P. 6004(f)(1); or (3) private sale with opportunity for overbid, Fed. R. Bankr. P. 6004(f)(1), *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. E.D. Cal. 1999).

The movant requests approval of a sale. The sale terms are reflected in the sale agreement submitted with the motion as Exhibit C, ECF No. 97. Based on the motion and supporting papers, the court finds that the sale presented for the court's approval is fair and equitable considering the relevant A & C Properties factors. The sale will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion to approve a sale has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The 14 day stay period of Fed. R. Bankr. P. 6004(h) is waived. The court hereby approves the sale that is reflected in the sale agreement submitted with the motion as Exhibit C and filed at docket no. 97.

10. [19-20389](#)-A-7 **IN RE: CAROLYN ANGUIANO**
[BLF-3](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT
11-24-2021 [\[46\]](#)

NICHOLAS WAJDA/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.
DEBTORS DISCHARGED: 04/29/2019

Final Ruling

Motion: Approve Compromise or Settlement of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Approved
Order: Civil minute order

Parties to Compromise: Geoffrey Richards, Trustee;
Dispute Compromised: Fire Victim Trust Settlement
Summary of Material Terms: As set forth in Exhibit A, ECF No. 51

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The chapter 7 trustee moves for an order approving settlement of a claim made to the Fire Victim Trust Settlement. The claim, which is property of the bankruptcy estate, arises out of the debtor's property damage and/or personal injuries caused by the November 2018 wildfire which occurred in Butte County.

A Fire Victim Trust was established to provide an efficient process to fairly compensate the holders of timely filed claims for damages sustained because of the fire. The proposed settlement of the claim in this case is part of an aggregate settlement reached and documented in the bankruptcy case: *In re PG&E Corporation, and Pacific Gas and Electric Company*, United States Bankruptcy Court, Northern District of California, Case No. 19-20088.

The Fire Victim Trust determined that the appropriate compensation for the debtor's claim is \$114,311.41. The allocation to the debtor's claim was predicated on real and personal property loss/damage, emotional distress for annoyance and discomfort, and emotional distress-zone of danger.

The proceeds from the claim in this case are allocated and summarized as follows:

Description	Attorney Fee Division - Special Counsel	Amount
Gross Award		\$114,311.41
Total Attorney's Fees 24%		(27,434.74)
The Wagner Law Group	\$13,717.37	
Kabateck LLP	\$13,717.37	
Net Award to Estate		\$86,876.67

The proceeds from the claim will be approved and paid by Fire Victim Trust incrementally. At this time 30% of the award has been approved for disbursement.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles the dispute described above. The compromise is reflected in the Fire Victim Trust Determination Notice, dated June 22, 2021, submitted with the motion as Exhibit A, ECF No. 51. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's motion to approve a compromise has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the Fire Victim Trust Determination Notice, dated June 22, 2021, submitted with the motion as Exhibit A, ECF No. 51.

11. [19-20389](#)-A-7 **IN RE: CAROLYN ANGUIANO**
[BLF-4](#)

MOTION FOR COMPENSATION FOR CHRISTOPHER NOYES AND BUTCH
WAGNER, SPECIAL COUNSEL(S)
11-24-2021 [[53](#)]

NICHOLAS WAJDA/ATTY. FOR DBT.
DEBTORS DISCHARGED: 04/29/2019

Final Ruling

Application: Allowance of First and Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

Background

In this Chapter 7 case, Kabateck, LLP and The Wagner Law Group, special counsel for the trustee, have applied for an allowance of first and final compensation. The compensation and expenses requested are based on a contingent fee agreement approved pursuant to § 328(a) of the Bankruptcy Code. The order granting employment was entered September 4, 2021, BLF-2, ECF No. 40. Under the approved fee agreement legal fees are 24% of all amounts collected from the claim approved by the Fire Victim Trust, ECF No. 51. Under

the fee agreement The Wagner Law Firm and Kabateck LLP will each receive 50% of the legal fees collected.

The applicant requests that the court allow compensation in the total amount of \$27,434.74 as follows: fees in the amount of \$13,717.37 to The Wagner Law Group; and fees in the amount of \$13,717.37 to Kabateck LLP.

The applicant further requests that the court authorize payment of special counsels' approved attorney fees in increments as the settlement award will be approved and paid incrementally to the chapter 7 trustee. At this time only a pro rata payment of 30% of the total award has been approved for distribution, ECF No. 53, 1:25-27. Thus, counsel would be paid 24% of \$34,293.42 (or \$8,230.42). The applicant further requests that the remaining \$19,204.32 be paid in increments of 24% of the amounts which the trustee receives from the Fire Victim Trust. A disbursement date for the remaining funds has not yet been determined or approved by the Fire Victim Trust, ECF No. 53, 4:16-19.

Legal Authority

"Section 328(a) permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.' In the absence of preapproval under § 328, fees are reviewed at the conclusion of the bankruptcy proceeding under a reasonableness standard pursuant to 11 U.S.C. § 330(a)(1)." *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002) (footnote omitted) (quoting 11 U.S.C. § 328(a)). "Under section 328, where the bankruptcy court has previously approved the terms for compensation of a professional, when the professional ultimately applies for payment, the court cannot alter those terms unless it finds the original terms to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." *Pitrat v. Reimers (In re Reimers)*, 972 F.2d 1127, 1128 (9th Cir. 1992) (internal quotation marks omitted).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court approves the payment of attorney fees to special counsel as follows: \$8,230.42 (24% of \$34,293.42) and the remaining \$19,204.32 to be paid in additional increments equaling 24% of the amounts the chapter 7 trustee receives from the Fire Victim Trust.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The Wagner Law Group and Kabateck, LLP's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation and reimbursement of expenses as follows: \$8,230.42 (24% of \$34,293.42) and the remaining balance of \$19,204.32 to be paid in additional increments equaling 24% of the amounts the chapter 7 trustee receives from the Fire Victim Trust.

12. [21-23798](#)-A-7 **IN RE: ONYEMA NWOSU**

SUBSTITUTION OF ATTORNEY
11-30-2021 [[18](#)]

TIEN DUONG/ATTY. FOR DBT.

Final Ruling

Motion: Substitute Attorney

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. Any opposition to the relief sought has been waived. See *id.*

The court will approve the motion. The motion to substitute attorney Tien Duong in place of Onyema Nwosu, is granted. Counsel shall submit an appropriate order.

13. [21-23912](#)-A-7 **IN RE: ROBERT/JENNIFER FINE**
[DBL-1](#)

MOTION TO COMPEL ABANDONMENT
12-21-2021 [\[13\]](#)

BRUCE DWIGGINS/ATTY. FOR DBT.

Final Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2): no written opposition required
Disposition: Denied without prejudice
Order: Civil Minute Order

Description: Business Assets

The debtor seeks an order compelling the abandonment of business assets listed in his bankruptcy schedules.

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

RULE 6007 (b)

(b) Motion by party in interest
A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate. *Unless otherwise directed by the court, the party filing the motion shall serve the motion and any notice of the motion on the trustee or debtor in possession, the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.* A party in interest may file and serve an objection within 14 days of service, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to other entities as the court may direct. If the court grants the motion, the order effects the trustee's or debtor in possession's abandonment without further notice, unless otherwise directed by the court.

Fed. R. Bankr. P. 6007(b) (emphasis added).

Bankruptcy Rule 6007(a) requires that the debtor's motion to abandon be served on all creditors and the United States trustee as well as the chapter 7 trustee. Here, the debtor has failed to serve Acima

Credit Fka Simpl who is listed on the master address list. See Proof of Service, ECF No. 17.

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's Motion to Compel Abandonment of the debtor's business assets has been presented to the court. Having considered the motion together with papers filed in support and opposition,

IT IS ORDERED that the debtor's motion is denied without prejudice.