UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

DAY: **TUESDAY**
DATE: **MAY 30, 2023**
CALENDAR: **9:00 A.M. CHAPTER 9 AND 11 CASES**

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION INSTRUCTIONS

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. However, 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. 20-23726-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
WGG-33

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH MYRON POWELL
4-28-2023 [754]

GABRIEL LIBERMAN/ATTY. FOR DBT.
DAVID GOODRICH/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
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). 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).

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. 1986). 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. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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.

Jeffrey I. Golden's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 758.

2. 20-23726-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
WGG-34

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH LIVINGSTONE COLLEGE
4-28-2023 [761]

GABRIEL LIBERMAN/ATTY. FOR DBT.
DAVID GOODRICH/ATTY. FOR MV.

Final Ruling

Motion: Approve Compromise of Controversy
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
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). 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).

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. 1986). 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. The compromise is reflected in the settlement agreement attached to the motion as an exhibit. 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.

Jeffrey I. Golden's motion to approve a compromise 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 court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as exhibit and filed at docket no. 765.

3. 23-21430-A-11 **IN RE: JUGJIT JOHAL**
PMR-3

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-12-2023 [29]

PETER PETERSON/ATTY. FOR MV.
SHARON SCOFIELD VS.

No Ruling

4. 23-21430-A-11 **IN RE: JUGJIT JOHAL**
PMR-3

MOTION TO DISMISS CASE
5-12-2023 [35]

PETER PETERSON/ATTY. FOR MV.

No Ruling

5. 22-21583-A-11 **IN RE: KAREN SINNUNG**
AF-3

MOTION TO APPROVE STIPULATION FOR ADEQUATE PROTECTION AND PLAN TREATMENT OF FIRST LIEN SECURED BY REAL PROPERTY
4-28-2023 [62]

ARASTO FARSAD/ATTY. FOR DBT.

Final Ruling

Matter: Approval of Stipulation for Adequate Protection
Notice: LBR 7056-1, 9014-1(f)(1); written opposition required
Disposition: Denied
Order: Civil minute order

Debtor Karen Sinnung moves for approval of a stipulation for adequate protection and Plan Treatment. Stipulation, ECF No. 41.

The motion will be denied. First, the stipulation provides for a "non-interest bearing [payment] balloon upon maturity of the loan." *Id.* at ¶ 6. The stipulation also indicates that as of September 2022, the arears were $64,937.51. *Id.* The plan calls for contractual payments in the amount of $2,552.14 starting October 1, 0222. *Id.* at ¶ 5. The date and amount of the balloon payment are not stated. Moreover, this will directly impact feasibility. 11 U.S.C. § 1129(a)(11).

Second, this could not approve self-executing stay relief orders. In the Eastern District, all-or almost all-order requiring noticed motions. LBR 9014-1(k)(1). Here, the stipulation provides for stay relief by declaration. Stipulation ¶ 11, ECF No. 41.

Third, a debtor may not solicit support for a plan unless and until the disclosure statement has been approved and provided.

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after

notice and a hearing, by the court as containing adequate information.

11 U.S.C. § 1125(b).

Here, the "adequate protection" is a bargain for agreement to vote in favor of the plan. Stipulation ¶ 15, ECF No. 41.

For each of these reasons the motion is denied, and the stipulation disapproved.

CIVIL MINUTE ORDER

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

Karen Sinnung's motion has been presented to the court. Having considered the [motion/application/objection] together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied; and

IT IS FURTHER ORDERED that the Stipulation, ECF NO. 41, is disapproved.

6. 22-23186-A-11 **IN RE: C S I ROOF REMOVAL, INC.**

CONFIRMATION OF PLAN
3-9-2023 [52]

MATTHEW DECAMINADA/ATTY. FOR DBT.

No Ruling

7. 22-23186-A-11 **IN RE: C S I ROOF REMOVAL, INC.**
CAE-1

CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION
12-9-2022 [1]

MATTHEW DECAMINADA/ATTY. FOR DBT.

No Ruling

8. 20-24098-A-11 **IN RE: SLIDEBELTS, INC.**
RLC-34

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PARSONS BEHLE & LATIMER AND ADVANCED CFO
5-1-2023 [422]

STEPHEN REYNOLDS/ATTY. FOR DBT.
DEBTOR DISCHARGED: 11/18/21

Tentative Ruling

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

Slidebelts, Inc., the reorganized debtor, moves to approve a compromise with Parsons Behle & Latimer and Advanced CFO. The problem arose when those defendants received a disproportionate percentage of their fees in an administratively insolvent estate. *In re Chochise College Park, Inc.*, 703 F.2d 1339 1356 n. 22 (9th Cir. 1983); In re Lazar, 83 F.3d 306, 308-09 (9th Cir. 1996). Overpayments received by these administrative creditors aggregate about $50,000; they seek to settle the dispute for $5,000. Brinkman Portillo Ronk APC, an unpaid administrative creditor, opposes the motion.

FACTS[1]

Slidebelts, Inc. manufactures men's and women's belts. Facing financial headwinds, it sought the protections of the bankruptcy court.

First Bankruptcy

In August 2019, Slidebelts, Inc. filed a Chapter 11 bankruptcy. Vol. Pet., *In re Slidebelts, Inc.*, No. 19-25064 (Bankr. E.D. Cal. 2019), ECF No. 1 ("Slidebelts I").[2] The petition did not elect treatment as small business debtor or under Subchapter V debtor. Slidebelts hired, and the court approved, Parsons Behle as its counsel and Advanced CFO as its financial advisor. Orders, Slidebelts I, ECF No. 99, 101.

Thereafter, Slidebelts hired two other professionals to assist it in its effort to reorganize: (1) Knobbe, Martens, Olson & Bear LLP as special counsel with respect to intellectual properties issues, Order, Slidebelts I, ECF No. 197; and (2) Eisner Amper LLP as its accountant. Order, ECF No. 217.

[1] The "Facts, "Procedure" and "Jurisdiction" sections of this opinion are quoted from Civ. Minutes, *Slidebelts Inc. v. Parsons, Behle and Latimer et al.*, No. 21-2052 (Bankr. E.D. Cal. November 16, 2021), ECF No. 21.
[2] The court takes judicial note of the docket in Slidebelts I. Fed. R. Evid. 201(b)(2).

In March 2020, the U.S. Trustee appointed a committee of unsecured creditors. Notice of Appointment, Slidebelts I, ECF No. 222. The committee hired, and this court approved, employment of counsel, Brinkman Portillo Ronk, and a financial advisor, Dundon Advisors. Orders, Slidebelts I, ECF No. 293, 318.

During the bankruptcy Slidebelts faced two particular impediments to reorganization. First, the debtor's eligibility to obtain a Paycheck Protection loan while under the protection of the bankruptcy court was an issue. The debtor contended that it was so entitled; the Small Business Administration, who administered those loans disagreed. In fact, in April 2020, Slidebelts had received a Paycheck Protection loan in the amount of $350,000, after misrepresenting in its loan application that it was not under the protection of the bankruptcy court. The Small Business Administration cried foul. Since a central component of the debtor's plan involved such a Paycheck Protection Plan loan the debtor's inability to resolve the issue presented particular problems.

Second, the debtor and the committee of unsecured creditors did not share a common vision for the best path forward. Not only did this preclude a consensual plan but the disagreement, and resultant friction between the parties and counsel, generated what the debtor perceived to be unnecessary and welcome administrative expenses that would need to be paid as a part of the plan.

In April 2020, the debtor attempted to dispatch the unsecured creditors committee, and its counsel, as well as financial advisors, by filing an Amended Voluntary Petition, which made a Subchapter V election. Am. Pet. Item # 8, ECF No. 263; 11 U.S.C. §§ 1102, 1181(b) (Subchapter V cases do not ordinarily have committees). The United States Trustee appointed Walter Dahl, as the Subchapter V trustee. Notice, ECF No. 281. Less than one week later, the debtor withdrew its Amended Petition, Notice, ECF No. 288, and Walter Dahl ceased his work as the Subchapter V trustee. Notice of Resignation, ECF No. 298.

Also in April 2020, Slidebelts filed a disclosure statement. Disclosure Statement, ECF No. 243. The disclosure statement was scheduled to be heard in early June 2020. First Community Credit Union, a creditor, and the Unsecured Creditors Committee opposed the disclosure statement and the plan on which it was based. Oppos., ECF No. 323, 332.

Dissatisfied by the SBA's objection to obtaining a Paycheck Protection Plan loan during a bankruptcy and by the Unsecured Creditors Committee's opposition its plan—and the mounting professional fees arising from that opposition, in June 2020, Slidebelts moved to dismiss it case. Prior to that date, after obtaining court approval, Slidebelts paid compensation and expenses its own professionals, i.e., Parsons Behle, Advanced CFO and Knobbe Martens Olson & Bear LLP, but not to other professionals, e.g., committee counsel and financial advisors. As Slidebelts explained its request to dismiss the case, it wanted to "refile under

Subchapter V of Chapter 11" and "apply for Paycheck Protection Program funds while the case is dismissed.'" *Id.* 1:21-24.

At the same time, Parsons Behl final application for compensation. Appl. for Compensation, ECF No. 368. It sought additional compensation of $67,753.50 and expenses of $6,167.82.

At oral argument on the motion to dismiss, committee counsel, Brinkman Portillo Ronk, suggested that allowing Slidebelts' attorneys and financial advisor to retain fees paid without pro-rata payment to other professionals was a "effectively a structured dismissal" in violation of priority scheme. 11 U.S.C. §§ 503(b)(2), 507(a)(2); *Czyzewski v. Jevic Corp.*, 137 S.Ct. 973, 983-985 (2017). At the conclusion of the hearing the court granted the motion without conditioning it on payment of all professionals on a pro-rata basis. But it later reconsidered the point and issued the following order:

> Upon further reflection, the court modifies its rulings on the debtor's motion to dismiss and debtor's counsel's application for compensation:
>
> 1. debtor's motion to dismiss the chapter 11 case is granted, and the case is hereby dismissed;
>
> 2. as to Parsons Behle & Latimer's ("the firm") motion for additional compensation and request to finalize all interim application for compensation and reimbursement, it is hereby ordered that the application is granted to the extent provided herein: [A] the firm's first interim application for compensation and reimbursement in the amounts of $46,847.50 and $8,104.24, respectively, are approved on a final basis; [B] the firm's second interim application for compensation and reimbursement in the amounts of $60,708.00 and $2,286.86, respectively, are approved on a final basis; [C] the firm's third and final application for compensation and reimbursement in the amounts of $67,753.50 and $6,167.81, respectively, are approved on a final basis; [D] all other requests for compensation and expenses are disapproved;
>
> 3. debtor shall not make further payment of administrative expenses, 11 U.S.C. §§ 503(b), 507(a)(2), to any claimant (including its counsel) and Parsons Behle & Latimer shall not apply retainer, if any, held to such approved administrative expenses, except as provided herein;
>
> 4. not later than July 13, 2020, any professional holding an administrative claim, 11 U.S.C. §§ 503(b), 507(a)(2), shall file and serve such final

applications for approval as are required by the code and/or rules, noticed under LBR 9014-1(f)(2) and shall set the matter for hearing on August 3, 2020, at 1:30 p.m.; opposition be filed not later than July 27, 2020; reply is waived;

5. not later than August 10, 2020, the debtor shall simultaneously pay all professionals holding an approved administrative claim under 11 U.S.C. § 503(b): [A] in full, i.e., the entire amount of compensation and expenses approved by the court or if payment in full is not possible, shall pay such claims pro-rata, *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1356 fn. 22 (9th Cir. 1983) (insolvent estates pay administrative claims pro-rata); *In re Lazar*, 83 F.3d 306, 308-09 (9th Cir. 1996); *Czyzewski v. Jevic Corp.*, 137 S.Ct. 973, 983-85 (2017) (dismissal of chapter 11 may not be used to order bankruptcy code priorities with the consent of the affected party); [B] file a declaration specifying in detail compliance with paragraph 5(A) hereof.

...

8. the court retains jurisdiction over applications for, as well as payment of, administrative claims and to enforce the terms of this order.

Order, ECF No. 403.

The 52 words that comprise ¶ 5(A) of the order give rise to this adversary proceeding.

Second Bankruptcy

In August 2020, Slidebelts, Inc. filed a second Chapter 11 bankruptcy. Vol. Pet., *In re Slidebelts, Inc.*, No. 20-24098 (Bankr. E.D. Cal. 2020), ECF No. 1 ("Slidebelts II").[3] Vol Pet., ECF No. 1. This case was filed as a Subchapter V, Chapter 11.

Slidebelts proposed, and consensually confirmed, a plan of reorganization. Order, Slidebelts II, ECF No. 355.[4] The plan preserves to the debtor the right to recover payments from Parsons Behl & Latimor, Knobbe Martens, and Advanced CFO as preference payments, 11 U.S.C. § 547, or in amounts in excess of the dismissal order. Order ¶ 5(A), ECF No. 403; Plan of Reorganization § II.4(c), ECF No. 281. It also revested property in the debtor on the

[3] The court takes judicial note of the docket in Slidebelts II. Fed. R. Evid. 201(b)(2).
[4] Brinkman Portillo did not oppose confirmation. Civ. Minutes, *In re Slidebelts, Inc.*, No. 20-24098 (Bankr. E.D. Cal. October 4, 2021).

effective date, retained and revested all cause of action in the debtor and retained jurisdiction. *Id.* at §§ IX.1, IX.3, X.5(2),(3).

PROCEDURE

After confirmation of the plan in Slidebelts II, the debtor filed this adversary proceeding against Parsons, Behle, and Latimer; Advanced CFO; and Knobbe Martens Olson & Bear contending that they received $41,130.92, $7,296.89, and $2,487.93, respectively, in excess of the pro-rata amount authorized by this court. Order, ECF No. 403 ¶ 5(A). This motion followed.

JURSIDICTION

This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b); *see also* General Order No. 182 of the Eastern District of California. Jurisdiction is core. 28 U.S.C. § 157(b)(2)(A); 11 U.S.C. §§ 503(b), 507(a)(2).

LAW

Prior to confirmation, Federal Rule of Bankruptcy Procedure 9019 gives this court authority to approve, or disapprove, settlements between the debtor in possession/trustee and other parties. After plan confirmation, the plan, and not Rule 9019, controls approval or disapproval of compromises. *In re Oakhurst Lodge, Inc.*, 582 B.R. 784, 796-797 (Bankr. E.D. Cal. 2018); *In re Eliminator Custom Boats, Inc.*, No. BAP CC-19-1003-KUFL, 2019 WL 4733525, at *6 (B.A.P. 9th Cir. Sept. 23, 2019). But here, the plan specifically incorporates the provisions of Rule 9019 for post-confirmation compromises. It provides:

> The Debtor will have the power and authority to settle and compromise any Dispute Claim subject to Bankruptcy Court Approval under Rule 9019 of the Federal Rules of Bankruptcy Procedure. For administrative convenience, the Debtor will have authority to settle any Disputed Claim in an Allowed Claim of Less than $15,000 without approval of the Bankruptcy Court.

Plan § VII.5, ECF No. 355.

Section VII.5 applies only to Disputed Claims. *Id.* "Disputed Claims" is a defined term. Plan §§ III(2),(13). Disputed means "a Claim for which a Proof of Claim was filed prior to the applicable Claims Bar Date that has not been Allowed or Disallowed by a final non-appealable order and as to which the Debtor or another party in interest has filed an objection prior to the Effective Date. In addition, [D]isputed [C]laim refers to claims listed in Debtor Schedules as disputed and the claim holder does not hold a valid security interest and has failed to filed a proof of claim no distribution will be made to that claim." *Id.* Since neither, Parsons Behle, nor Advance CFO, fall within those definitions, § VII.5 is inapplicable.

But other provisions of the plan control. At confirmation, the court allowed a modification of the plan by inclusion in the order confirming the plan, language that made clear that court approval of any settlement with Parsons Behle, nor Advance CFO. Order Confirm Plan 1:22 (including redline amendments); see also, Redline Addendum, ECF No. 282.

> Payments to professionals in the Debtor's prior Chapter 11 case are subject to a "Jevic" order pursuant to *Czyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973 (2017) which means that a payment is recovered from an administrative priority claimant paid in the prior case, then those funds would be subject to pro rata distribution among administrative priority claimants in the prior case. Therefore, the Debtor has filed an adversary proceeding, Complaint filed July 16, 2021, Adversary Proceeding No. 21-02052 (hereafter referenced as the "Complaint."), in the prior bankruptcy case No. 19-25064-A-11 to compel turnover of the administrative priority claims paid in excess of the pro rata share which are as follows: Parson Behle & Latimer in the amount of $41,130.92, Advanced CFO in the amount of $7,296.89 and Knobbe Martens the amount of $2,487.93. The Debtor, pursuant to the Complaint, then requests that recovered funds from Parsons Behle & Latimer, Advanced CFO, and Knobee Martens shall be paid to David Sousa, Subchapter V Trustee in current Case No. 20-24098-A-Aa, to be distributed pro rata to administrative priority claim holders in prior Case No. 19-25064-A-11, equalizing payment to those prior professionals. If funds are recovered in the full amount requested, which is approximately 39%of allowed claims, payment shall be awarded as follows: $22,996.22 to EisnerAmper LLP, $18,601.59 to Brink Portillo Ronk, $8,567.69 to Dundon Advisors LLC and $750.24 to Walter Dahl. *Debtor shall prosecute this Complaint to judgment or settlement, which if settled will require court approval...*

Id. (emphasis added).

Though the redline addendum does specify the particular rule by which the settlement is to be approved or disapproved, the court infers from the inclusion of Rule 9019 in Section VII.5 that the same standards are to be applied.

Rule 9019 standards are well-known to this court. 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. 1986). 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.*

DISCUSSION

Probability of Success

The debtor believes the issue is "novel" and "stacked against the Debtor." Mot. Approve Compromise, 4:3-4, ECF No. 422.

This court disagrees and has already so ruled. As this court stated in ruling on Parson Behle's motion to dismiss the adversary proceeding filed against it. As this court explained:

> Defendants Parsons Behle and Advanced CFO argue that the order dismissing Slidebelts I does not create any right to recover from them. Mem. P. & A. 1:11-15, 3:15-16, 8:23-28, ECF No. 15.
>
> This court disagrees. Long-standing precedent authorizes this court to construes its own orders. *Travelers Indemnity Company v. Bailey*, 557 U.S. 137, 151, 129 S.Ct. 2195, 174 L.Ed.2d 99 (2009); *In re Wilshire Courtyard*, 729 F.3d 1279, 1289 (9th Cir. 2013).
>
> The order dismissing Slidebelts I was an order designed to address a defacto structured dismissal that altered the priority of distributions to administrative creditors, Czyzewski v. Jevic Corp., 137 S.Ct. 973, 983-985 (2017), by ordered them to be paid in parity. 11 U.S.C. §§ 503(b), 507(a)(2); *In re Cochise College Park, Inc.*, 703 F.2d 1339, 1356 fn. 22 (9th Cir. 1983) (insolvent estates pay administrative claims pro-rata); *In re Lazar*, 83 F.3d 306, 308-09 (9th Cir. 1996). The order described the end result; it made no effort to specify the mechanism by which that result was obtained. But if necessary to achieve parity in treatment of administrative creditors, Slidebelts' adversary proceeding to recover those overages was well within the terms of this court's order.

Civ. Minutes p. 5, *Slidebelts Inc. v. Parsons, Behle and Latimer et al.*, No. 21-2052 (Bankr. E.D. Cal. November 16, 2021), ECF No. 21.

This court further explained.

> Here, the complaint states at least two plausible theories of recovery against the defendants.
>
> *Causes of action recognized by Thomas Corp. and by Chochise Park*
>
> Circuit courts have long understood that a trustee, or in this case, a debtor in possession, 11 U.S.C. §§ 1101(1), 1107(a), has the right to recover overpayments to administrative creditors. *Thomas Corp. v. Nicholas*, 221 F.2d 286, 290 (5th

Cir. 1955) (trustee "may of course have rights to recover money paid to the other creditors which has unjustly enriched them"); *In re Contractor Technology, Ltd.*, 345 B.R. 800, 805-806 (Bankr. S.D. Tex. 2006); see also, 11 U.S.C. § 502(j) (reconsideration of claims); *In re Adkins*, 425 F.3d 296, 304 n 14 (6th Cir. 2005) (suggesting application of § 502(j) to administrative claims).

The Ninth Circuit has explained its thinking on the issue very clearly. *In re Chochise College Park, Inc.*, 703 F.2d 1339 1356 n. 22 (9th Cir. 1983).

> *All administrative expense creditors must be treated with "absolute equality," unless, of course, some creditors, with full knowledge of the facts, have agreed to subordinate their claims.* In this case, previous disbursements to other administrative expense creditors of the Cochise estate could possibly prevent the appellants from recovering that pro rata share of the assets of the estate that they would have received if all disbursements had been delayed until the trustee's final accounting. The trustee, not having given notice to the land purchasers, is therefore personally liable for the difference. *Under principles of restitution, the trustee may well have rights to recover money paid to other creditors that has unjustly enriched them; regardless of those rights, however, he is liable to the land sale purchasers for the share they otherwise would have received.*

In re Cochise Coll. Park, Inc., 703 F.2d 1339, 1356 (9th Cir. 1983) (internal citation omitted) (emphasis added), citing *Thomas Corp. v. Nicholas*, 221 F.2d 286, 290 (5th Cir. 1955).

That alone is a sufficient basis to deny defendants' motion.

Turnover: 11 U.S.C. § 542

Section 542 provides:

> Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a).[5]

[5] The defendants do not argue that 11 U.S.C. § 542(c), (d) apply here.

There are limitations to the reach of § 542.

> Property subject to a turnover action is limited to identifiable estate property and money due to the debtor without dispute. *The turnover provision cannot be used to create or expand the debtor's interest in property beyond what existed on the petition date.* [*In re Graves* (10th Cir. 2010) 609 F3d 1153, 1157-1158—trustee could not compel turnover of tax refund applied as prepayment to future year's tax liability because tax refund was not in debtor's control on petition date; *compare In re Newman* (9th Cir. BAP 2013) 487 BR 193, 202—debtor who received—and spent—tax refund postpetition was ordered to pay Chapter 7 trustee prorated portion of refund attributable to income earned prepetition].

March, Ahart & Shapiro, *California Practice Guide: Bankruptcy* § 21:1709 (Rutter Group December 2020).

As of August 25, 2020, the date Slidebelts II was filed, the debtor's rights to recover payment were fixed. The order dismissing the case bars dispute. Order ¶ 5(A), ECF No. 355. Moreover, as of August 20, 2020, all applications for compensation had been heard and, therefore, the amount necessary to equalize payment to administrative claimants was subject to mathematical computation. Moreover, the computation is not difficult. "Unless further facts requiring another computation are shown, the method of computing the appellant's share of the bankrupt's assets would be to multiply the total of its claim by the ratio of total receipts in the two accounts to the sum of the actual disbursements..." *Thomas Corp. v. Nicholas*, 221 F.2d 286, 290 (5th Cir. 1955); *see also, In re Florida West Gateway, Inc.*, 180 B.R. 299, 302 (Bankr. S.D. Fla. 1995).[6]

For these reasons, Slidebelts has stated a cause of action.

Id. at pp. 10-11.

For these reasons, the court does not consider these issues novel.

Difficulties in Collection

Difficulties in collection are present in every adversary proceeding. But there is nothing in this case that suggests an unusual risk profile with respect to collection efforts. The respondents are a law firm and a financial advisor. This factor weighs against approval.

[6] Though the plan contemplates a preference action against these defendants, Plan § 11.4(c)(1), the plaintiff has not so plead and the court need not consider that issue.

Complexity, Expense and Delay

Complexity is not an issue. *Thomas Corp.* and by *Chochise Park* recognize these rights and the court has ordered the respondents to comply. Expense and delay are present. The respondents have indicated a willingness to litigate this adversary proceeding "to the highest available appellate level." Rothschild decl. 4:15-16, ECF No. 424. This factor weights in favor of approving the compromise.a

Paramount Interests of Creditors

Only one creditor has weighed in on the compromise: Brinkman, Portillo Ronk, APC. Opp., ECF No. 418. It notes "Debtor seeks to compromise with Debtor's former professionals, whom it chose and hired in the First Case, for the paltry sum of slightly more than 1/10th of the amount that Parsons and ACFP were collectively overpaid." *Id.* at 4:20-22. This factor weighs heavily against approval of the compromise for two reasons. First, the only creditors (whose rights are being impacted) has signaled its disapproval. The court gives that disapproval great weight. Second, because the compromise is with the debtor's first counsel and because the amount of the settlement is but a small fraction of the amount in dispute, the court infers lack of good faith.

Given what appear to be well-settled rights, *Thomas Corp.* and *Chochise Park*, creditor opposition, the size of the settlement compared to the amount in dispute, and, at least a plausible objection based on a lack of good faith, the court finds that the movant has not satisfied Rule 9019.

VIOLATIONS OF LOCAL RULES

The court notes that the movant has violated LBR 7-005, which requires attorneys and parties to use a standardized certificate of service.

> The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1.

While Slidebelts did use EDC Form 7-005, Certificate of Service, ECF No. 427, the majority of the service was accomplished by a third-party service company, CertificateofService.com, which used its own custom certificate of service. This does not comply with applicable local rules and the movant is cautioned to comply with all applicable local rules.

CIVIL MINUTE ORDER

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

Slidebelts Inc.’s motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied.