UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 12, 2021 at 10:30 a.m.

1.	**20-21093-E-7** **SMJ-3**	**STEVEN/KIMBERLY KENT** **Scott Johnson**	**MOTION TO COMPEL ABANDONMENT** **7-26-21 [71]**

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).

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and parties requesting special notice on July 26, 2021. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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, ----------.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Steven Delmar Kent and Kimberly Kent ("Debtor") requests the court to order Kimberly J. Husted ("the Chapter 7 Trustee") to abandon property commonly known as 2090 Bourbon Street, Pollock Pines, California ("Property"). The Property is encumbered by the lien of Quicken Loans, securing a claim of $360,519.00. The Declaration of Kimberly Kent has been filed in support of the Motion and values the Property at $425,000.00. Declaration, Dckt. 73. Debtor explains there intention to sell the Property. *Id.*

Trustee has not filed an opposition. Debtor received their discharges on June 15,2 021. Dckt. 58.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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 Compel Abandonment filed by Steven Delmar Kent and Kimberly Kent ("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 to Compel Abandonment is granted, and the Property identified as 2090 Bourbon Street, Pollock Pines, and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Kimberly J. Husted ("Trustee") to Steven Delmar Kent and Kimberly Kent by this order, with no further act of the Trustee required.

2. **09-37016-E-7 BLF-3 2 thru 3** | **EDWARD/KARIN WESTJOHN David Foyil** | **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DEBTOR KARIN EDITH WESTJOHN 7-1-21 [178]**

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses. The claims and disputes to be resolved by the proposed settlement are the estate's interest in a multi-district product liability lawsuit in the United States District Court for the Southern District of West Virginia ("Lawsuit") that is based on allegations relating to alleged injuries and medical expenses incurred by debtor Karin Westjohn as a result of a defective mesh product implanted in 2004.

The Lawsuit has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Ledger filed as Exhibit 183 in support of the Motion, Dckt. A):

A. Gross settlement amount of $110,000 to the bankruptcy.

B. Court-ordered MDL assessment of $5,500.00

C. 40% percent in attorneys' fees totaling $41,800.00 to be divided between Mostyn Law Firm (25%), Arnold & Itkin (25%), and Danzinger & De Llano, LLP (50%); with $2,890.01 in expenses.

D. Medical liens held by Anthem Blue Cross Blue Shield in the amount of $5,121.76.

E. Leaving a Net Settlement Award to the Bankruptcy Estate in the amount of $54,688.23.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Probability of success or of a more significant recovery is uncertain where the Defendant has denied the various allegation, raised several defenses and Special Counsel has explained to Movant that less than 20 cases involving similar claims have been tried to verdict although thousands have been pending for years). Additionally, those cases that have been tried to verdict are currently in appeal. Further, debtor having suffered previously from other conditions it may be difficult to establish the necessary element of causation at trial.

Difficulties in Collection

Movant is unaware of any difficulties in collection if she were to obtain a judgment at trial.

Expense, Inconvenience, and Delay of Continued Litigation

Without approval of this settlement, the estate will continue to incur additional costs in preparing for trial and further litigation. At this time, there is no pending trial date and the recovery, if any, would be delayed possibly for a year or more.

Paramount Interest of Creditors

The settlement is in the best interest of creditors where the compromise allows Movant to collect $99,378.24 for the bankruptcy estate without expense, uncertainty, or delay of costly litigation.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because recovers almost $100,000 from the claim of the estate, and then after payment of the administrative expenses relating to the prosecution of the claim of the estate and Debtor, have $54,6898.32 net monies for the benefit of the estate and creditors. The Motion is granted.

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 Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Karin Edith Westjohn ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Ledger filed as Exhibit A in support of the Motion (Dckt. 183).

3.	**09-37016-E-7** **BLF-4**	**EDWARD/KARIN WESTJOHN** **David Foyil**	**MOTION FOR COMPENSATION FOR CAROLINE L. MAIDA, SPECIAL COUNSEL(S)** **7-1-21 [185]**

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.

Because this matter relates to the prior Motion to Approve Settlement, the court has posted it as a tentative ruling. No appearance is required by the Applicant if Applicant has no issue with or points to address to the court in connection with the tentative decision stated below.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Danziger & De Llano, LLP, the Special Counsel ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Special Counsel acted as special litigation counsel for the Chapter 7 Trustee in the prosecution of a multi-district product liability lawsuit in the United States District Court for the Southern District of West Virginia ("Lawsuit").

Fees are requested according to the Fee Agreement signed by the Chapter 7 debtors and later accepted by the Chapter 7 Trustee. The order of the court approving employment of Applicant was entered

on January 4, 2021. Dckt. 177. Applicant requests fees in the amount of $41,800.00 (40% of $104,500) and costs in the amount of $2,890.01.

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 defending debtors in a products liability lawsuit. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Contingency Fee: Litigation

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in the prosecution of a multi-district product liability lawsuit in the United States District Court for the Southern District of West Virginia, for which Client agreed to a contingent fee of 40% of the gross settlement award after payment of court-ordered MDL Assessment fees. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). $110,000.00 of net monies (exclusive of these requested fees and costs) was recovered for Client.

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $2,890.01 pursuant to this application.

The costs requested in this Application are,

Administrative Expenses		$1,819.72
Qualified Settlement Fund Admin Fee:	$717.00	
Bankruptcy Coordination Fee:	$700.00	
Postage:	$27.20	
Copy Charges and Mailing Supplies:	$3.89	
Special Master Fee:	$371.63	
General and Case-specific Expenses:		$1,070.29
Copy Charges and Mailing Supplies:	$8.30	
Court Costs & Filing Fees:	$443.84	
Experts and Legal Research:	$160.70	
Delivery Services and Postage:	$25.61	
Records:	$204.10	
A&I Interest:	$19.99	
Total Costs:		**$2,890.01**

FEES AND COSTS & EXPENSES ALLOWED

Fees

Percentage Fees

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $41,800.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 7 Trustee is authorized to pay from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Costs & Expenses

First and Final Costs in the amount of $2,890.01 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$41,800.00
Costs and Expenses	$2,890.01

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 Danziger & De Llano, LLP ("Applicant"), Special Counsel for Kimbery J. Husted, the Chapter 7 Trustee, ("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 Danziger & De Llano, LLP is allowed the following fees and expenses as a professional of the Estate:

Danziger & De Llano, LLP, Professional employed by the Chapter 7 Trustee

Fees in the amount of $41,800.00
Expenses in the amount of $2,890.01,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

4. **21-21932-E-7** **DANIEL/PETRINA BROWN** **MOTION TO DISMISS DANIEL PHILIP BROWN II**
GTB-1 **George Burke** **7-9-21 [15]**

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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on July 9, 2021. By the court's calculation, 34 days' notice was 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). 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 respondent 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 Dismiss is denied without prejudice.

Philip Brown and Petrina Paula Brown, the Chapter 7 Debtors, filed this Motion seeking dismissal of Debtor Daniel Philip Brown from the instant Chapter 7 case pursuant to 11 U.S.C. § 707 (a) and Federal Rules of Bankruptcy Procedure Rules 1017 (e), (f) (1) and 9014, while permitting the Joint Debtor Petrina Paula Brown's case to remain open.

The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. The case was filed on May 26, 2021.

2. Debtors' creditors with secured claims BMO Harris and Mountain America Credit Union recently sold repossessed collateral for more than the amounts owed by Debtor. As a result, Debtor Daniel Brown's liability for debts became zero whereas Joint Debtor Petrina Brown (only) is still personally liable for the other debts listed.

3. Shortly before filing the Petition, Debtor received refund checks of around $16,000 from the creditors referred to in ¶ 2 and purchased a work truck with most of the funds.

4. Debtors apparently did not understand the necessity to disclose the changed circumstances to counsel before filing and/or that they no longer needed to file a joint Petition.

5. Dismissal of the individual Debtor will not prejudice creditors because Joint Debtors do not list any non-exempt property.

6. Debtor is acting in good faith with his request for dismissal for the simple reason that Debtor now has no debt and thus he does not need a chapter 7 discharge order.

Motion, Dckt. 15.

APPLICABLE LAW

Pursuant to 11 U.S.C. § 707(a), "the court may dismiss a case under this chapter only after notice and a hearing and only for cause." The court has substantial discretion in ruling on a motion to dismiss under section 707(a), and in exercising that discretion must consider any extenuating circumstances, as well as the interests of the various parties. *In re Atlas Supply Corp*., 857 F.2d 1061 (5th Cir. 1988); *In re Green*, 64 B.R. 530 (B.A.P. 9th Cir. 1986).

Cause is determined using a two step analysis:

> (1) First, we must consider whether the circumstances asserted to constitute "cause" are "contemplated by any specific Code provision applicable to Chapter 7 petitions." Id. If the asserted "cause" is contemplated by a specific Code provision, then it does not constitute "cause" under § 707(a). See id. at 1194. If, however, the asserted "cause" is not contemplated by a specific Code provision, then we must further consider whether the circumstances asserted otherwise meet the criteria for "cause" for discharge under § 707(a).

Sherman v. SEC (In re Sherman), 491 F.3d 948, 970 (9th Cir. 2007); quoting *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184 (9th Cir. 2000).

A chapter 7 debtor that seeks to voluntarily dismiss their chapter 7 case has the burden to show "that there would be no legal prejudice resulting from the dismissal." *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 841 (B.A.P. 9th Cir. 2008). "The law in the Ninth Circuit is clear: a voluntary Chapter 7 debtor is entitled to dismissal of his case so long as such dismissal will cause no legal prejudice to interested parties." *Leach v. United Sates (In re Leach)*, 130 B.R. 855 (9th Cir. BAP 1991). The court will evaluate legal prejudice to interested parties utilizing both legal and equitable considerations. *Id*. at 856. The Ninth Circuit has "affirmed a refusal to dismiss when the bankruptcy court perceived legal prejudice." *Hickman*, 384 B.R. at 840.

DISCUSSION

Debtor asserts that creditors will not be prejudiced by the dismissal of this Chapter 7 case. Dckt. 15. The chapter 7 debtor that seeks to voluntarily dismiss their chapter 7 case has the burden to show "that there would be no legal prejudice resulting from the dismissal." *Hickman*, 384 B.R. at 841. Debtor asserts that creditors will not be prejudiced by the dismissal for the following reasons:

A. Debtor now has no debt and thus he does not need a chapter 7 discharge order.

B. Joint Debtors do not list any non-exempt property.

Review of Schedules and Statement of Financial Affairs

In Part 4 of the Statement of Financial Affairs, the two Debtors state under penalty of perjury that no creditors have repossessed or sold any property of the Debtors. Dckt. 1 at 32. However, in the Motion to Dismiss Debtor Daniel Brown, it is stated that BMO Harris and Mountain America Credit Union "recently" sold repossessed collateral that had a value greater than the debt it secured. Further, that the Debtors received $16,000 "shortly" before the case was filed, that being the surplus after the sale of the collateral. No declaration is provided for these alleged facts, which facts are inconsistent with the statements under penalty of perjury by both of the Debtors on the Statement of Financial Affairs.

The Motion also states that Debtor Daniel Brown purchased a truck with "most of the funds" received from the creditors from the sale of the collateral.

On original Schedule A/B filed in this case on May 26, 2021, Debtors do list owning a 2013 Ford Flex, and no truck. Dckt. 1 at 12. On Amended Schedule A/B Debtors list also owing a 2004 Chevrolet Silverado with 127,500 miles on it, stating it has a value of $13,500.

On Schedule E/F Debtors list BMO Harris Bank as having an unsecured claim for ($33,578.00) which the claim is identified as "Diesel Truck Repossession." This does not identify the Diesel Truck, and no Diesel Truck is listed on Schedule A/B, as one must do when the vehicle is still owned by the debtor and "merely" repossessed. Dckt. 1 at 20.

On Schedule D Mountain America Credit Union is also listed as a creditor with an unsecured secured claim for ($12,827.00). *Id*. at 21. The claim described as "RV Repossession," with the vehicle not being identified and not being listed on Schedule A/B.

While asserted that the $16,000 was received pre-petition and that most of the $16,000 was spent prepetition to purchase a seventeen model year old Silverado with 127,500 miles on it, no evidence (testimony and documentary, such as proof of the funds received and copy of registration of the vehicle) has been provided.

There are too many "open questions" concerning the conduct of the two Debtors, the receipt of the $16,000, and the purported pre-petition of a vehicle on the eve of filing bankruptcy to let Debtor Daniel Brown slip out of bankruptcy. When the case was filed and the two creditors were listed as having repossessed vehicles, it was clear that such repossessed vehicles had to be listed on Schedule A/B.

Additionally, on Schedule E/F Debtor's state under penalty of perjury that both Debtors incurred and owe the following debts:

Navy Federal Credit Union.....($7,848.00)

Navy Federal Credit Union.....($21,389.00)

Dckt. 1 at 21-22. In addition, Debtor Petrina Brown is stated to owe individually ($1,035) to Kohls Capital One. Though the Motion states that Debtor Daniel Brown liability for debts became zero with the sale of the repossessed collateral, such is contradicted by the two Debtors stating under penalty of perjury that Debtor Daniel Brown is liable on $29,237.00 in debt to Navy Federal Credit Union.

It is not clear, as alleged in the Motion, that this conduct and inaccurate statements under penalty of perjury by Debtors was in "good faith."

The court denies the Motion without prejudice. Debtors can amend the Statement of Financial Affairs, provide the court with documentation that the repossession occurred prior to bankruptcy, that the sale by creditors occurred prior to bankruptcy, the receipt of the monies, and the purchase of the truck (including vehicle registration) prior to the filing of the bankruptcy case.

The Motion is denied without prejudice.

The court shall issue a minute 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 filed by Daniel Philip Brown and Petrina Paula Brown ("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 denied without prejudice.

5. **19-26574-E-7** **SEAN ALMEIDA** **MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PATELCO CREDIT UNION**
DNL-7 **Timothy Walsh** **7-15-21 [61]**

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).

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2021. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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, ----------.

The Motion for Approval of Compromise is granted.

J. Michael Hopper, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Patelco Credit Union ("Settlor"). The claims and disputes to be resolved by the proposed settlement are Settlor's judgment lien asserted against real property commonly known as 22 Solano Drive, Dixon, California recorded on July 20, 2017 resulting from Settlor's judgment against Debtor's former spouse in the amount of $9,279.58 prior to the separation of Debtor and Debtor's former spouse.

By Adversary Proceeding No. 21-02041-E, the Trustee seeks declaratory relief as to the validity, priority, and extent of liens of record against 22 Solano Drive, including the judgment lien asserted by Movant.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 64):

A. From proceeds of the Trustee's sale of 22 Solano Drive, Patelco shall receive $7,950 as full and final payment of the Patelco Judgment. Patelco shall reasonably cooperate with the Trustee's sale of 22 Solano Drive, to include trust delivery into escrow release of the abstract(s) of judgment and satisfaction of the Patelco Judgment.

B. Patelco shall be dismissed with prejudice from the Adversary Proceeding, with the parties bearing their own attorney fees and costs.

C. The Trustee and Patelco will exchange broad releases, to include all claims that have been asserted or could be asserted by Patelco against the Bankruptcy Estate and 22 Solano Drive. This release shall not inure to the benefit of the Debtor and Spouse.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

The amount of the proposed Settlement Payment approximates the community's allocation of the underlying liability of the debtor's former spouse, i.e. the portion incurred prior to the date that the Debtor and spouse separated. Moreover, no further interest shall accrue while the Trustee liquidates 22 Solano Drive.

Difficulties in Collection

This factor is neutral as the Trustee is in a defensive position as to 22 Solano Drive.

Expense, Inconvenience, and Delay of Continued Litigation

Any continued litigation with Movant will require time and expense that is otherwise wholly avoidable by the compromise.

Paramount Interest of Creditors

It is the Trustee's opinion that the compromise is in the best interest of the estate because liquidation of 22 Solano Drive for the benefit of unsecured creditors will be facilitated by resolution of Movant's lien claim.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because resolving this claim will allow for Movant to sell real property to the benefit of the estate and creditors. The Motion is granted.

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 Approve Compromise filed by J. Michael Hopper, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Patelco Credit Union ("Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 64).

6. 21-21271-E-7 MOHAMMED IQBAL
Pro Se

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS
7-7-21 [34]

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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and creditors on July 9, 2021. By the court's calculation, 34 days' notice was 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). 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 respondent 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.

Pursuant to prior Order of this court (Dckt. 37), the Motion to Dismiss was granted.

On August 2, 2021, the court entered an order dismissing this Chapter 7 Case pursuant to the Trustee's Motion to Dismiss. The court did not note that on August 1, 2021, Nazia Iqbal, a creditor, filed an opposition to the Motion. Oppositions were due by July 30, 2021.

In the Motion, Creditor states that the Debtor is her brother and has had a troubled past with the law. That this current bankruptcy case was filed to derail cases that Creditor and her Father have asserting claims for elder abuse and eviction.

It is asserted that with the dismissal of this case, Debtor would just keep filing future cases to disrupt the non-bankruptcy court proceedings.

This is Debtor's first case filed in this court. If the Debtor files again within one year, the provisions of 11 U.S.C. § 362(c)(3) [only one prior case filed in the prior twelve months] and § 362(c)(4)

[more than one case filed in the prior twelve months] would come into play concerning the automatic stay and the use of it to derail non-bankruptcy proceedings.

In this case, the court modified the automatic stay to allow Creditor to proceed with the eviction proceedings. Order, Dckt. 32.

At the hearing, **xxxxxxx**

7. 21-21199-E-7 JASMINE TURNER MOTION TO DISMISS CASE
UST-1 Pro Se 6-16-21 [21]

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.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Not Provided. No Certificate of Service was filed with the court.

At the hearing xxxxxxxx

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Dismiss is xxxxx.

The United States Trustee, Tracy Hope Davis ("U.S. Trustee"), seeks dismissal of the case pursuant to 11 U.S.C. § 707(a), on the grounds that Jasmine Lynn Turner ("Debtor") failed to comply with the prepetition credit counseling requirement imposed by 11 U.S.C. § 109(h)(1).

APPLICABLE LAW

Pursuant to 11 U.S.C. § 707(a), "the court may dismiss a case under this chapter only after notice and a hearing and only for cause." The court has substantial discretion in ruling on a motion to dismiss under section 707(a), and in exercising that discretion must consider any extenuating circumstances, as well as the interests of the various parties. *In re Atlas Supply Corp*., 857 F.2d 1061 (5th Cir. 1988); *In re Green*, 64 B.R. 530 (B.A.P. 9th Cir. 1986).

Cause is determined using a two step analysis:

> (1) First, we must consider whether the circumstances asserted to constitute "cause" are "contemplated by any specific Code provision applicable to Chapter 7 petitions." Id. If the asserted "cause" is contemplated by a specific Code provision, then it does not constitute "cause" under § 707(a). See id. at 1194. If, however, the asserted "cause" is not contemplated by a specific Code provision, then we must further consider whether the circumstances asserted otherwise meet the criteria for "cause" for discharge under § 707(a).

Sherman v. SEC (In re Sherman), 491 F.3d 948, 970 (9th Cir. 2007); quoting *Neary v. Padilla (In re Padilla)*, 222 F.3d 1184 (9th Cir. 2000).

DISCUSSION

The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

A. an attached certificate and debt repayment plan;

B. a certification under § 109(h)(3); or

C. a request for a determination by the court under § 109(h)(4).

Here, Debtor failed to file a Credit Counseling Certificate. Debtor filed her petition on April 1, 2021 with Section 15 of the petition indicating that Debtor had received the required credit counseling. No copy of the certificate was attached.

The U.S. Trustee provides the Declaration of Robbin Little, Paralegal Specialist for the U.S. Trustee. In the Declaration, the Paralegal Specialist testifies to having communicated via telephone and via email with Debtor several times relating the certificate but Debtor has not yet filed a copy. Declaration, Dckt. 23.

Debtor having failed to file a certificate of creditor counseling within 180 days from the filing of the petition, such a certificate being required by the Bankruptcy Code, cause exists to dismiss the case.

The court also notes that this case was filed on April 1, 2021 and the Chapter 7 Trustee provides the following reports of the First Meetings of Creditors conducted in this case:

A. June 7, 2021 Trustee Docket Entry Report: "Debtor Did Not Appear; Debtor(s) is/are Pro Se. Continued Meeting of Creditors to be held on 7/1/2021 at 09:00 AM at U.S. Bankruptcy Court - Sacramento Division. (Farris, Nikki)"

B. July 1, 2021 Trustee Docket Entry Report: "Debtor Did Not Appear; Debtor(s) is/are Pro Se. Continued Meeting of Creditors to be held on 8/18/2021 at 11:00 AM at U.S. Bankruptcy Court - Sacramento Division. (Farris, Nikki)"

~~The Motion is granted, and the case is dismissed.~~

~~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 United States Trustee, Tracy Hope Davis ("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 granted, and the case is dismissed.

8. **20-25057-E-7** **DAVID FLETCHER**
DNL-8 **Douglas Jacobs**

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH DAVID S. FLETCHER AND LISA FLETCHER
7-15-21 [257]

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).

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 Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2021. By the court's calculation, 28 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice).

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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, **----------**.

The Motion for Approval of Compromise is xxxxx.

Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with David S. Fletcher ("Debtor") and Lisa Fletcher ("Spouse"), (collectively "Settlor"). The claims and disputes to be resolved by the proposed settlement are the Adversary Proceeding 21-02040 where Trustee seeks turnover and transfer avoidance remedies from Spouse related to the Fletcher Living Trust, and real property in Marysville, California commonly known as 713 Saddleback Drive, 540 Saddle Back Drive (sold to a third party pre-petition), and 7959 State Highway 70/639 Mayer Road (collectively "Trust Property").

Proper Pleading and Compliance with the
Federal Rules of Bankruptcy Procedure
Enacted by the U.S. Supreme Court

The court notes that this Motion attempts to join multiple claims for relief in one motion. The first being the approval of a compromise pursuant to Federal Rule of Bankruptcy Procedure 9019. The second motion is for the sale free and clear of a lien of the Property subject to the Settlement Agreement as provided in 11 U.S.C. § § 363(b), 363(f)(3) and (4).

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b). Local Bankruptcy Rule 9014-1(d)(5) states that "[e]very application, motion, contested matter or other request for an order, shall be filed separately from any other request, except (1) that relief in the alternative based on the same statute or rule may be filed in a single motion; and (2) as otherwise provided by these rules."

At the hearing xxxxxxxx

REVIEW OF THE MOTION

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement and Release Agreement filed as Exhibit A in support of the Motion, Dckt. 260):

A. Debtor and Spouse shall pay the Trustee $300,000 (in addition to the Chapter 13 Funds in the amount of $47,777.36 consisting of proceeds of the Florida real property sale and income of Debtor's landscape, which shall be retained by the Trustee for the benefit of the Bankruptcy Estate).

B. The Adversary Proceeding No. 21-02040-E shall be dismissed.

C. The Bankruptcy Estate's interest in the Fletcher Living Trust, Trust Properties, Fletcher Landscape, FF&E and Goodwill shall be conveyed to the Debtor subject to all liens, except for the lien asserted by the EDD.

D. Broad releases exchanged between the Trustee and Spouse shall not inure to the benefit of the Debtor.

APPROVAL OF COMPROMISE

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

Movant states that the proposed $300,000 settlement payment approximates the estimated $307,000 net recovery.

Difficulties in Collection

This factor is neutral as the subject real property and personal property are readily identifiable and not likely to be dissipated pending trial.

Expense, Inconvenience, and Delay of Continued Litigation

Movant asserts that litigating the dispute would cost the estate an additional $100,000 attorney fees and add 12-18 months to administration of the estate. The law favors compromise and not litigation for its own sake.

Paramount Interest of Creditors

According to Movant, approval will allow the Trustee to move forward with her efforts to close this case and issue a distribution to unsecured creditors. Approval will result in an efficient administration of the Debtors' estate while avoiding any further delay and the substantial costs attendant to continued litigation. As such, the settlement is in the paramount interest of creditors.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing ----------.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because it allows the Trustee to administer the estate and generate substantial monies for creditors, secured and unsecured, in this case, while minimizing the administrative costs and expenses.

SALE OF PROPERTY

Debtor is purchasing the Property from Trustee Movant for $300,000 on an "as is" "where is" basis. The sale is subject to bidding at the sale hearing.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of Employment Development Department ("EDD"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> (f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant asserts that the Trustee may sell the Property free and clear of the EDD lien pursuant to 11 U.S.C. § 363(f)(3) and (4) because the $300,000 proposed sale price exceeds the $234,607.53 claim secured by the EDD lien. Additionally, 11 U.S.C. Section 724 provides for automatic avoidance of the approximate $138,163.59 penalty portion of the claim.

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

~~Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it will allow Trustee to recover and maximize the net return to the estate.~~

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because Trustee does not anticipate any opposition to this motion and the waiver would allow for the sale to move forward immediately upon entry of Bankruptcy Court order approving the Agreement.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Approval of Compromise between Movant and David S. Fletcher ("Debtor") and Lisa Fletcher ("Spouse"), (collectively "Settlor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 260).

IT IS FURTHER ORDERED that Kimberly J. Husted, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b), (f)(3), and (f)(4) to David S. Fletcher and Lisa Fletcher or nominee ("Buyer"), the Property identified as the bankruptcy estate's interest in the Fletcher Living Trust, real property in Marysville, California commonly known as 713 Saddleback Drive, 540 Saddle Back Drive, and 7959 State Highway 70/639 Mayer Road, Fletcher Landscape (Debtor's sole proprietorship business), personal property used in connection with Fletcher's Landscape (equipment, vehicles, and furnishings), and Goodwill ("Property"), on the following terms:

A. The Property shall be sold to Buyer for $300,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 260, and as further provided in this Order.

B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

C. The Property is sold free and clear of the lien of Employment Development Department, Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(3 and (f)(4), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

FINAL RULINGS

9.	**18-90029-E-11** **FWP-13**	**JEFFERY ARAMBEL** **Pro Se**	**CONTINUED MOTION TO ABANDON** **4-8-21 [1410]**

Final Ruling: No appearance at the August 12, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties is continued to 10:30 a.m. on September 30, 2021 (a regular Modesto Division Law and Motion Calendar).

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC ("Summit") as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.,* ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

Creditor's Opposition

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment ("Adjustment") process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties' title companies and successfully recorded..

Plan Administrator's Reply

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; an d even after abandonment, the Adjustment process mat still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

SBN V Ag I LLC ("Summit") Response

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator's proposal of temporary deferral of the Murphy Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

DISCUSSION

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

August 12, 2021 Hearing

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

The hearing on this Motion is continued to

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 Abandonment filed by Focus Management Group USA, Inc. ("the Plan Administrator") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties is continued to **10:30 a.m. on September 30, 2021** (a regular Modesto Division Law and Motion Calendar).

10. 21-21751-E-11 **BIONICA INC.**
Roderick MacKenzie

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
7-9-21 [61]

Final Ruling: No appearance at the August 12, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, Chapter 11 Trustee, and Office of the U.S. Trustee as stated on the Certificate of Service on July 11, 2021. The court computes that 32 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: $32.00 due on June 22, 2021.

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 a 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.

11. 20-23253-E-7 KJH-2 | **CHARLES/KATIE VACLAVIK** Nikki Farris | **MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S)** **7-6-21 [45]**

Final Ruling: No appearance at the August 12, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2021. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

Gabrielson & Company, the Accountant ("Applicant") for Kimberly J. Husted, the Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 22, 2021 through July 6, 2021. The order of the court approving employment of Applicant was entered on July 1, 2021. Dckt. 44. Applicant requests fees in the reduced amount of $1,330.37 and costs in the amount of $69.63.

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 professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professionalmust 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 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 preparing and federal and state income tax returns. 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 1.3 hours in this category. Applicant prepared accountant declaration and related employment documents for trustee review. Prepared first and final fee application, including detailed description of tax services.

Federal and California Estate Income Tax Returns: Applicant spent 3.2 hours in this category. Applicant Prepared first and final short year ended June 30, 2021 federal and California estate income tax returns for separate taxable estates of debtors Charles Vaclavik and Katie Mae Vaclavik.

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:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Michael Gabrielson	4.5	$405.00	$1,822.50
	0	$0.00	$0.00
Total Fees for Period of Application			$1,822.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $69.63 pursuant to this application.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Copies	$0.10 per page	$24.70
Postage		$44.93
		$0.00
Total Costs Requested in Application		$69.63

FEES AND COSTS & EXPENSES ALLOWED

Fees and Costs

Reduced Rate

Applicant seeks to be paid a single sum of $1,330.37 for its fees and $69.63 in costs incurred for Client. First and Final Fees and Costs in the amount of $1,400.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$1,330.37
Costs and Expenses	$69.63

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 Gabrielson & Company ("Applicant"), Accountant for Kimberly J. Husted, the Chapter 7 Trustee, ("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 Gabrielson & Company is allowed the following fees and expenses as a professional of the Estate:
>
> Gabrielson & Company , Professional employed by the Chapter 7 Trustee

Fees in the amount of $1,330.37
Expenses in the amount of $69.63,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 7 Trustee.

IT IS FURTHER ORDERED that the Chapter 7 Trustee is authorized to pay 100% of the fees and 100% of the costs allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.