ORDERED.

Dated: September 16, 2021

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

Benjamin H. Yormak,

Debtor.
_____/

Case No. 2:15-bk-04241-FMD
Chapter 7

ORDER GRANTING TRUSTEE'S RENEWED MOTION TO APPROVE COMPROMISE OF CONTROVERSY WITH DEBTOR [Doc. No. 876]

The Chapter 7 trustee asks the Court to approve a compromise of all outstanding issues with the debtor. Under the proposed compromise, the trustee will release all claims against the debtor in exchange for the bankruptcy estate's retention of $401,500.00 from a $1.1 million settlement fund previously approved by the Court. The holder of a disputed claim objects to the compromise.

In evaluating a motion to compromise under the Eleventh Circuit's holding in *In re Justice Oaks II, Ltd.*,[1] the bankruptcy court gives deference to the trustee's business judgment and canvasses the issues to determine whether the proposed compromise falls below the lowest point in the range of reasonableness. Having carefully considered the record, the Court finds that the proposed compromise satisfies the *Justice Oaks* standard and does not fall below the lowest point in the range of reasonableness. Accordingly, the Court will approve the compromise.

I. BACKGROUND

A. Debtor's Bankruptcy Case

The debtor in this Chapter 7 case, Benjamin Yormak ("Debtor"), is a practicing attorney who operates his own law firm (the "Law Firm") and primarily represents plaintiffs on a contingency fee basis. On April 24, 2015 (the "Petition Date"), Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code. At the time he filed his Chapter 13 case, Debtor had been embroiled in litigation for over a year with his father, Steven R. Yormak ("Claimant") (the "*Yormak v. Yormak* Lawsuit").[2]

On September 1, 2016 (the "Conversion Date"), Debtor converted his Chapter 13 case to a Chapter 7 liquidation case, and Robert Tardif (the "Trustee") was appointed as the Chapter 7 trustee. Chapter 7 trustees are charged with liquidating

[1] 898 F.2d 1544 (11th Cir. 1990).
[2] United States District Court for the Middle District of Florida, Case No. 2:14-cv-00033-JES-CM.

the non-exempt property of the bankruptcy estate for distribution to creditors in the order of priority provided for in the Bankruptcy Code. Generally, property of the bankruptcy estate consists of all property owned by the debtor as of the date the bankruptcy petition is filed.[3]

During the course of the Chapter 7 case, the Trustee has contended that as of the Petition Date, Debtor's principal non-exempt assets were (1) attorney's fees of $610,000.00 earned in connection with a False Claims Act lawsuit (the "Qui Tam Action" and the "Qui Tam Fees");[4] (2) attorney's fees to be awarded to Debtor in connection with a class action lawsuit (the "Class Action");[5] (3) attorney's fees earned in connection with contingency cases on which clients had retained Debtor prepetition (the "Contingency Fees"); and (4) a portion of the equity in a 2013 Volvo automobile owned by Debtor and his wife.[6]

In addition, the Trustee contended that Debtor converted his Chapter 13 case to a Chapter 7 case in bad faith, such that, under § 348(f)(2),[7] property of the estate is determined as of the date of conversion rather than the date of the original petition (the "Bad Faith Motion").[8] Here, if property of Debtor's bankruptcy estate is

[3] 11 U.S.C. § 541(a).
[4] United States District Court for the Middle District of Florida, Case No. 2:13-cv-00228-SPC-MRM.
[5] United States District Court for the Middle District of Florida, Case No. 2:16-cv-00206-PAM-MRM.
[6] Doc. No. 171.
[7] Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*
[8] Doc. No. 153.

determined as of the Conversion Date—16 months after the Petition Date—the Trustee has contended that the estate is entitled to the attorney's fees earned by Debtor between the Petition Date and the Conversion Date.

B. The First Compromise Order

The Court previously approved a partial compromise between Debtor and the Trustee in its *Order Granting Trustee's Verified Motion to Approve Compromise of Controversy with Debtor, Buckner and Miles, P.A., and Hagens Berman Sobol Shapiro LLP* (the "First Compromise Motion" and the "First Compromise Order") and the Court's order partially granting reconsideration of the First Compromise Order (the "Reconsideration Order").[9]

In the First Compromise Motion, the Trustee sought approval of a settlement agreement that provided for the following:

(1) the Trustee's and Debtor's agreement that the Qui Tam Fees, in the amount of $610,000.00, are property of the estate;

(2) an agreement between Debtor and the Trustee, on the one hand, and the two law firms that served as Debtor's co-counsel in the Class Action ("Class Counsel"), on the other hand, that Debtor was entitled to $1.1 million (the "Class Action Fees") as Debtor's share of the attorney's fees awarded in the Class Action, an

[9] Doc. Nos. 733, 735, 751.

increase from the $851,340.00 previously awarded to Debtor (or the Trustee) by the United States District Court in the Class Action;[10]

(3) the Trustee's and Debtor's agreement to allocate the Class Action Fees between Debtor and the bankruptcy estate, with the Trustee receiving $401,500.00 on behalf of the bankruptcy estate and Debtor receiving $698,500.00; and

(4) the Trustee's release of all claims against Debtor.

The Court granted the First Compromise Motion over Claimant's objection. Claimant then filed a motion for reconsideration, which the Court granted in part, as set forth in the Reconsideration Order.

In the Reconsideration Order, the Court, with the Trustee's and Debtor's consent, approved (1) their agreement that the Qui Tam Fees are property of the estate, and (2) their agreement with Class Counsel regarding Debtor's entitlement to the Class Action Fees. However, the Court denied approval of the Trustee's proposed allocation of the Class Action Fees between Debtor and the bankruptcy estate and the Trustee's release of all claims against Debtor.

Claimant appealed the First Compromise Order and the Reconsideration Order;[11] the appeal is now pending in the District Court.[12]

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[10] In connection with a dispute between Class Counsel and Debtor and the Trustee, the District Court had previously determined that Debtor (or the bankruptcy estate) was entitled to $851,340.00 of the total $27 million attorney's fees awarded (Doc. No. 733-9).
[11] Doc. No. 775.
[12] United States District Court for the Middle District of Florida, Case No. 2:20-cv-00384-JES.

C. The Second Compromise Motion and Claimant's Objection

About a year later, the Trustee filed his *Corrected Renewed Motion to Approve Compromise of Controversy with Debtor* (the "Second Compromise Motion").[13] Under the Second Compromise Motion, the Trustee seeks to resolve all disputes between Debtor and the Trustee, including (1) the allocation of the Class Action Fees; (2) the Bad Faith Motion; (3) the extent to which Debtor's prepetition and pre-Conversion Date Contingency Fees are property of the bankruptcy estate; and (4) the Trustee's objection to Debtor's claimed exemption in the Volvo.

Under the proposed settlement, $401,500.00 of the Class Action Fees will be allocated to the bankruptcy estate, and $698,500.00 will be allocated to Debtor—the same allocation previously agreed to by the parties in the First Compromise Motion—and the Trustee will release all claims against Debtor. At the July 27, 2021 hearing on the Second Compromise Motion, the Trustee clarified that the $401,500.00 payment to the estate is intended to resolve not only the dispute regarding the estate's interest in the Class Action Fees, but to resolve *all* disputes between Debtor and the Trustee. In other words, the parties looked to the Class Action Fees "as a pot to fund the global settlement."[14]

[13] Doc. No. 876.
[14] Doc. No. 930, Transcript of July 27, 2021 hearing, pp. 50-51.

Claimant objects to the Second Compromise Motion on four grounds.[15] Claimant contends, first, that the proposed allocation of the Class Action Fees does not fairly represent Debtor's prepetition work on the Class Action or the Contingency Fees; second, that Debtor has never fully disclosed the Contingency Fees to which he was entitled; third, that Debtor's representations regarding his earned Contingency Fees lack credibility; and fourth, that the Trustee has not adequately investigated the extent to which the Class Action Fees and the Contingency Fees are property of the estate.

II. ANALYSIS

A. Standard for Approval of a Compromise

Under Federal Rule of Bankruptcy Procedure 9019, courts may approve a compromise or settlement on motion by the trustee and after notice and hearing.[16] "It is a fundamental tenet of bankruptcy jurisprudence that the proponent of a settlement, such as the trustee in this case, bears the burden of demonstrating that the proposal is both reasonable and in the best interest of the bankruptcy estate."[17]

[15] Doc. No. 890.
[16] Fed. R. Bankr. P. 9019(a).
[17] *In re Vazquez*, 325 B.R. 30, 35 (Bankr. S.D. Fla. 2005) (quoted in *In re Gibson*, 2017 WL 7795950, at *6 (Bankr. M.D. Fla. June 22, 2017)).

In the Eleventh Circuit, bankruptcy courts consider four factors, commonly referred to as the *Justice Oaks* factors, to determine the "fairness, reasonableness and adequacy"[18] of a proposed compromise:

> (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.[19]

In evaluating the *Justice Oaks* factors, courts generally defer to the trustee's business judgment when reasonable,[20] although the ultimate decision to approve a settlement lies within the court's discretion.[21] In exercising its discretion, the court seeks to determine whether the settlement, at a minimum, is fair and does "not fall below the lowest point in the range of reasonableness."[22]

B. The *Justice Oaks* Factors Support Approval of the Compromise.

1. The Probability of Success on the Merits

Under the first *Justice Oaks* factor, the probability of success in the litigation, courts do not actually *decide* the specific legal and factual issues presented; rather,

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[18] *In re Chira*, 567 F.3d 1307, 1312-13 (11th Cir. 2009) (quoting *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986)).
[19] *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549 (quoting *In re A & C Properties*, 784 F.2d at 1381).
[20] *In re Gaddy*, 622 B.R. 440, 448 (Bankr. S.D. Ala. 2020) (citations omitted).
[21] *In re Soderstrom*, 477 B.R. 249, 252 (Bankr. M.D. Fla. 2012).
[22] *Id.* at 252 (quoting *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549, and *In re Air Safety International, L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005)).

courts canvass the issues to determine only the *probability* of succeeding on the claims.[23]

Here, the Trustee's dispute with Debtor relates to four issues: (a) the extent to which the Class Action Fees are sufficiently rooted in Debtor's pre-bankruptcy past to qualify as property of the estate; (b) whether Debtor converted his Chapter 13 case to Chapter 7 in bad faith; (c) whether the Contingency Fees other than the Class Action Fees and Qui Tam Fees are property of the estate; and (d) whether Debtor is entitled to his claimed exemption in the Volvo automobile.

As set forth below, the Court concludes that the Trustee has a low probability of prevailing on the merits of the disputed claims; therefore, the first *Justice Oaks* factor, the probability of success on the merits, weighs in favor of approval of the proposed compromise.

a. Whether the Class Action Fees Are Sufficiently Rooted in Debtor's Pre-bankruptcy Past to Qualify as Property of the Estate

Under § 541(a)(1), property of a bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case."[24] If a debtor has a claim to property on the petition date, but does not receive payment on the claim until after the petition date, the claim qualifies as property of the

[23] *In re Justice Oaks II, Ltd.*, 898 F.2d at 1549. *See also In re Pullum*, 598 B.R. 489, 492 (Bankr. N.D. Fla. 2019) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983)).
[24] 11 U.S.C. § 541(a)(1).

bankruptcy estate if the claim is "sufficiently rooted in the pre-bankruptcy past."[25] For example, in *In re Herman*,[26] the bankruptcy court considered whether the debtor's interest in a salary bonus was property of the estate. The court stated that "the central and repeated question . . . is whether the postpetition payment is sufficiently grounded in the debtor's prepetition services and rights to qualify as estate property."[27]

Here, early in the Chapter 7 case, the Trustee filed a *Motion to Determine that Attorney's Fees in CBL Litigation Are Property of the Estate* (the "Class Action Fees Motion"). In the Class Action Fees Motion, the Trustee contended that Debtor's potential attorney's fee award in the Class Action was rooted in the prepetition services Debtor provided starting in 2011.[28]

However, in the Second Compromise Motion, the Trustee asserts (as he asserted in the First Compromise Motion) that he is in doubt as to whether he will be able to establish that the Class Action Fees are property of the estate under § 541(a). The Trustee's doubt arises from the fact that although Debtor began work on the Class Action in 2011, critical events giving rise to the Class Action Fees did not occur until after the Petition Date, including without limitation: (i) the February 2016 execution

[25] *In re Witko*, 374 F.3d 1040 (11th Cir. 2004) (quoting *Segal v. Rochelle*, 382 U.S. 375, 86 S. Ct. 511, 15 L. Ed. 2d 428 (1966)).
[26] 495 B.R. 555 (Bankr. S.D. Fla. 2013).
[27] *In re Herman*, 495 B.R. at 585.
[28] Doc. No. 365.

of Debtor's retainer agreement with his client, the putative class representative; (ii) the February 2016 execution of Debtor's fee allocation agreement with class co-counsel, Buckner + Miles; (iii) the March 2016 filing of the Class Action complaint; (iv) the evidence of Debtor's services in the Class Action for the periods between February 9, 2016, and August 4, 2019;[29] and (v) the settlement of the Class Action and award of attorney's fees in August 2019.[30]

Given these facts, the Trustee represents in the Second Compromise Motion that the Class Action Fees may not constitute property of the estate because they are not "sufficiently rooted" in Debtor's "pre-bankruptcy past."

In Claimant's objection to the proposed compromise, he contends, first, that the Trustee lacks an adequate factual basis for allocating only 36.5% of the Class Action Fees to the estate because, Claimant contends, Debtor has not produced time records to evidence the extent of his prepetition services in the Class Action; and second, that the need for further investigation of Debtor's time records is evidenced by the District

[29] Doc. No. 876, p. 10.
[30] *Id.*, pp. 10-11.

Court's award of $851,340.00 to Debtor as compensation for his "pre-suit" contributions to the Class Action.[31]

But the District Court's award of $851,340.00 to Debtor was designed to compensate him for *both* his "pre-suit contributions" *and* his post-suit services in the Class Action.[32] In making its ruling, the District Court considered Debtor's billing records for the postpetition period from February 9, 2016, to August 4, 2019;[33] the records indicate that Debtor spent 810.8 hours on the Class Action, for a total fee of $283,780.00 based on Debtor's regular hourly billing rate of $350.00. The District Court then applied a multiplier to the $283,780.00 in order to compensate Debtor for the time that he spent identifying and developing the Class Action before it was filed.[34]

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[31] Doc. No. 930, Transcript of July 27, 2021 hearing, pp. 29-39. Claimant cited the bankruptcy court's ruling in *In re Scotchel*, 491 B.R. 739 (Bankr. N.D. W. Va. 2013), for the principle that if all of a debtor's legal services were performed prepetition, the entire amount of a contingency fee award is property of the estate. In *Scotchel*, the debtor, an attorney, began work on a contingency fee case in 2001. Eleven years later, the debtor filed a Chapter 7 petition "on the eve of a prodigious settlement" and with apparent knowledge that a settlement in the case was imminent. Less than three months after the bankruptcy filing, a settlement was reached without the debtor's participation. The court, applying West Virginia law, determined that the debtor did not perform any postpetition services that were necessary to obtain the contingent fee, and that the entire fee was therefore rooted in his pre-bankruptcy past. But the facts in *Scotchel* are very different from those presented here. Here, although Debtor may have provided pre-suit services that formed the basis of the Class Action, he was not formally retained by his client until after he filed his bankruptcy case, and the Class Action complaint was not filed until almost a year after Debtor's bankruptcy petition. And, unlike in *Scotchel,* where the settlement was reached a mere three months after the debtor filed his bankruptcy case, the settlement in the Class Action was more than four years after the Petition Date.

[32] Doc. No. 733-9.

[33] *See* United States District Court for the Middle District of Florida, Case No. 2:16-cv-00206-PAM-MRM, Doc. Nos. 312 and 330-2.

[34] Doc. No. 733-9.

From this record, the Court might reasonably find that (i) Debtor began working on the Class Action in 2011, before the Petition Date; (ii) the Class Action was filed in March 2016, after the Petition Date; (iii) Debtor continued to work on the Class Action until it settled in August 2019; and (iv) the District Court's award of $851,340.00 to Debtor accounts for both his prepetition and his postpetition work on the Class Action.

Therefore, the Court concludes that the probability is low that the Trustee will be able to establish that the Class Action Fees, or any particular portion of the Class Action Fees, are "sufficiently rooted" in Debtor's "pre-bankruptcy past," such that they are property of the bankruptcy estate.

b. Whether Debtor Converted his Chapter 13 Case to Chapter 7 in Bad Faith

Under § 348(f)(2), if a debtor converts a case under Chapter 13 to a case under another chapter in bad faith, "the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion."[35] In *In re Stillwaggon*,[36] this Court held that a finding of bad faith under § 348(f)(2) "should be limited to a situation in which a debtor has deliberately abused the bankruptcy process, *e.g.*, by filing initially under Chapter 13 with the intention to thereafter convert to Chapter 7 in order to shelter an asset that the debtor expects to acquire

[35] 11 U.S.C. § 348(f)(2).
[36] 2014 WL 1087898 (Bankr. M.D. Fla. Mar. 19, 2014).

shortly after filing for bankruptcy," and that courts should not "punish debtors by making findings of bad faith where debtors have converted their cases merely to take advantage of the statutory right to convert."[37]

Here, the Trustee asserts that he is in doubt as to whether he will be able to establish that Debtor converted his case in bad faith under the *Stillwaggon* standard because the Trustee acknowledges the possibility that Debtor did not originally file his case as a Chapter 13 case in an attempt to exclude the Class Action Fees or other Contingency Fees from the estate.

For the Trustee to prevail on the Bad Faith Motion, the Trustee would need to establish, and the Court would need to find, that Debtor filed his Chapter 13 case to obtain the protection of the Bankruptcy Court (principally, the automatic stay under § 362) with the intent to later convert the case to a Chapter 7, in order to *somehow* exclude the Qui Tam Fees and the Class Action Fees from being property of the estate. But there is no evidence in the record (i) that Debtor knew, when he filed the Chapter 13 case in April 2015, that the Qui Tam Action, pending since 2013, would be unsealed and settled in December 2015; (ii) that Debtor knew in April 2015 that the Class Action (which had not yet been filed) would ultimately settle and $27 million in attorney's fees would be awarded to all Class Counsel in 2019; or (iii) that Debtor *somehow*

[37] *In re Stillwaggon*, 2014 WL 1087898, at *3 (citing *In re Sandoval,* 2005 WL 6960187 (B.A.P. 9th Cir. Aug. 3, 2005)).

gamed the system to exclude income he would have earned between the Petition Date and the Conversion Date by initially filing his case as a Chapter 13.

Here, the record reflects that after Debtor filed his Chapter 13 case in April 2015, he complied with the order establishing the duties and requirements of a Chapter 13 debtor.[38] He filed a Chapter 13 Plan[39] and made payments to the Chapter 13 Trustee of over $17,000.00 while the case was pending as a Chapter 13.[40] When Claimant filed his original claim for $724,275.00 and other unliquidated amounts, Debtor objected to the claim, such that the *Yormak v. Yormak* Lawsuit continued in this Court; in other words, the automatic stay did not shield Debtor from the *Yormak v. Yormak* Lawsuit.[41] And after Debtor sought turnover of the Qui Tam Fees from lead counsel in the Qui Tam Action,[42] he consented to the entry of the Court's order requiring lead counsel to turn over the Qui Tam Fees to Claimant's counsel to be held in trust "as a pre-petition asset for the benefit of the Debtor's estate."[43] In short, the record reflects that Debtor complied with his responsibilities as a Chapter 13 debtor.

But after Debtor's Chapter 13 case had been pending for 16 months, and after at least three scheduled confirmation hearings, Debtor had not obtained confirmation of his Plan. At that point, Debtor could have voluntarily dismissed his case as

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[38] Doc. No. 9.
[39] Doc. No. 6.
[40] Doc. No. 148, p. 2.
[41] *See* Doc. No. 851 for a description of the litigation between Debtor and Claimant in this Court.
[42] Doc. No. 35. (Debtor's Motion for Turnover was filed within five months of the Petition Date.)
[43] Doc. No. 74. (The Qui Tam Fees were later delivered to the Trustee.)

permitted by § 1307(b), and the *Yormak v. Yormak* Lawsuit would have continued in District Court. Instead, Debtor converted his case to a Chapter 7 liquidation case and subjected his non-exempt assets to administration by the Trustee.

Claimant contends that Debtor converted his case because the Chapter 13 trustee had objected to confirmation of his Plan on the grounds that Debtor had not dedicated all of his disposable income to the Plan and that Debtor needed to amend his schedules to reflect his additional income.[44] While the Chapter 13 trustee's objection *might* have been a factor in Debtor's decision to convert the case, it does not follow that the conversion itself was in bad faith. As the bankruptcy court held in *In re Jean*,[45] bad faith may be found where a debtor never intended to prosecute his Chapter 13 case, but not where the debtor is only taking advantage of the Bankruptcy Code's provisions allowing conversion.[46] Here, the record does not support a finding that Debtor "never intended to prosecute his Chapter 13 case."

The Court concludes that it is unlikely that the Trustee will succeed in establishing the estate's right to *any* postpetition, pre-Conversion Date fees, including the Class Action Fees.

[44] Doc. No. 930, Transcript of July 27, 2021 hearing, p. 42.
[45] 306 B.R. 708 (Bankr. S.D. Fla. 2004).
[46] *In re Jean*, 306 B.R. at 716.

c. Whether the Contingency Fees, Other than the Class Action Fees and the Qui Tam Fees, Are Property of the Estate

In the Second Compromise Motion, the Trustee represents that he considered the Contingency Fees other than the Class Action Fees and Qui Tam Fees and that, based on his evaluation, he believes the $401,500.00 allocated to the estate in the proposed settlement is reasonable in relation to the amount that the estate might have received on account of the estate's claim for the other Contingency Fees.[47]

In support of his contention, the Trustee attached a copy of *Debtor's Answers to Trustee's Interrogatories*, signed by Debtor under oath on December 12, 2016 (the "Interrogatory Answers").[48] The Interrogatory Answers include a list of 63 "prepetition clients" and a list of 19 "postpetition clients." Both lists identify the clients by their initials and state the date on which the client retained Debtor, the date that the client's lawsuit was filed, the attorney's fees due on settlement, and the date on which the fees were received.

In his Interrogatory Answers, Debtor stated that contingency fees generated by his prepetition clients totaled $385,792.26, and that his Law Firm had collected $322,000.00 of those fees during the time that his bankruptcy case was pending as a Chapter 13 case; thus, the Trustee estimated that approximately $64,000.00 of the

[47] Doc. No. 876, p. 3.
[48] *Id.*, pp. 18-23.

prepetition fees may remain due and uncollected.[49] In addition, the Trustee believes that the collected fees were likely spent (presumably for the expenses of the Law Firm's business operations and Debtor's living expenses) during the 16 months that Debtor operated his Law Firm under Chapter 13.[50]

Debtor also stated in his Interrogatory Answers that contingency fees generated by his postpetition clients totaled $108,228.33, some of which the Law Firm collected pre-Conversion Date and some of which the Law Firm the collected post-Conversion Date. After analyzing Debtor's Interrogatory Answers, the Trustee concluded that, even if the Court were to find that Debtor converted his case in bad faith, the prepetition and postpetition Contingency Fees combined would result in less than $200,000.00 for the bankruptcy estate.[51]

In objecting to the proposed compromise, Claimant contends that (i) Debtor—and his Interrogatory Answers—lack credibility;[52] (ii) the Trustee has not conducted a sufficient inquiry and that further discovery is needed to determine the amount of the Contingency Fees; and (iii) for the Court to make an informed decision on the Second Compromise Motion, "there must be sufficient disclosure, discovery and

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[49] *Id.*, p. 6.
[50] *Id.*, p. 14.
[51] *Id.*, p. 16.
[52] Doc. No. 930, Transcript of July 27, 2021 hearing, pp. 40-41. Claimant asserts that Debtor made prior misrepresentations in the bankruptcy case by understating the value of his Law Firm in his original bankruptcy schedules and omitting his interest in the Class Action Fees and Qui Tam Fees in his schedules after the case was converted to a Chapter 7.

analysis of *all* debtor contingency files."[53] At the hearing on the Second Compromise Motion, Claimant stated that Debtor should be required to produce his time records on every file that he identified in the bankruptcy case and every invoice on all of those files.[54]

But Claimant's contention that the settlement should not be approved without additional discovery is not well-taken.[55] First, the Trustee has assessed the information provided by Debtor, found that Debtor had addressed "most, if not all, of the prepetition clients that he had," and found Debtor's information to be credible;[56] second, the litigation of the Trustee's claims to the Class Action Fees and the Contingency Fees would require a time-consuming analysis, likely by a forensic accountant, of all the billing records and accounting records of Debtor and his Law Firm; third, some of the documents related to Debtor's prepetition and pre-Conversion Date attorney's fees are now a decade old; and fourth, as the Trustee notes, Debtor operated a contingency fee practice and is not required to maintain his time records with the same level of detail as an attorney who relies on hourly billing or court approval for his fees.[57]

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[53] Doc. No. 890, p. 5 (emphasis added).
[54] Doc. No. 930, Transcript of July 27, 2021 hearing, p. 30.
[55] *In re Gaddy*, 622 B.R. at 449.
[56] Doc. No. 930, Transcript of July 27, 2021 hearing, pp. 52-53.
[57] *Id.*, pp. 51-52.

The Court concludes that the probability is low that the Trustee will be able to establish whether and to what extent the Contingency Fees are property of the estate.

d. Whether Debtor is Entitled to his Claimed Exemption in the Volvo Automobile

Debtor claimed that his Volvo automobile is exempt because it is owned jointly with his wife as tenants by the entireties. Although the Trustee initially objected to the claim of exemption,[58] under the proposed compromise, he will withdraw the objection. Claimant does not object to this portion of the proposed compromise.

2. The Difficulties, if any, to Be Encountered in the Matter of Collection

The Trustee does not assert that he will encounter any difficulties in the matter of collection, because all of the Class Action Fees are currently held in Class Counsel's attorney's trust account. Therefore, this factor is neutral.

3. The Complexity of the Litigation Involved, and the Expense, Inconvenience and Delay Necessarily Attending It

The Trustee contends that although the legal elements of his claims are not particularly complex, the proof required to establish the claims is fact-intensive, and the factual discovery required to prepare for trial is likely to be time-consuming and difficult.[59]

[58] Doc. No. 171.
[59] *See In re Gaddy*, 622 B.R. at 454.

The Court concurs with the Trustee's assessment; the Trustee would likely need to retain a forensic accountant to review extensive billing and accounting records of Debtor and his Law Firm, and the allocation of the Class Action Fees to the prepetition and pre- and post-Conversion Date time periods would likely be complex and time-consuming. And proof of a debtor's intent to abuse the bankruptcy process generally must be established by evidence of the debtor's conduct throughout the case which could require extensive discovery and is not suited for resolution by summary judgment.[60]

For these reasons, the Court finds that the Trustee's litigation of the Bad Faith Motion, the Class Action Fees Motion, and the determination of the estate's interest in the other Contingency Fees would likely be protracted and disproportionately expensive for the estate. The benefit of a negotiated settlement is that the parties—and the bankruptcy estate—are able to avoid the expense and delay of such extensive discovery and litigation.

The Court concludes that the third *Justice Oaks* factor, the complexity and expense of the litigation, weighs in favor of approving the compromise.

[60] *In re Wiggins*, 2012 WL 3889099, at *4 (Bankr. E.D. Tenn. Sept. 7, 2012).

4. The Paramount Interest of Creditors and a Proper Deference to Their Reasonable Views in the Premises

In the Second Compromise Motion, the Trustee asserts that he is "currently holding $558,313.37 in the estate," and that there "are currently five allowed general unsecured claims in the total amount of $140,941.14."[61] The settlement proposed in the Second Compromise Motion would produce an additional $401,500.00 for the estate.

Claimant, the holder of a disputed claim, filed the only objection to the Second Compromise Motion.[62] But as the court stated in *Gaddy*, "it is not the creditors' task to determine the fairness of a proposed settlement; it is the court's obligation to make that determination while making certain not to ignore their legitimate views or concerns."[63] In addition, "no case holds that creditors have an absolute 'veto power' over approval of a settlement. Instead, they speak to 'proper deference' to their '*reasonable* views.'"[64]

Here, Claimant's primary argument is that the settlement is not supported by a sufficient investigation, and that the Trustee should pursue costly and time-

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[61] Doc. No. 876, ¶ 2. (The allowed claims exclude Claimant's claim, which the Court disallowed. *See* Doc. No. 851.)

[62] Although the Court entered an order disallowing Claimant's claim in Debtor's bankruptcy case (Doc. No. 851), Claimant appealed the Court's ruling (District Court Case No. 2:21-cv-00156-JES). The Court later entered an order on Claimant's motion for a stay pending appeal, permitting Claimant to participate and be heard on the Second Compromise Motion (Doc. No. 914).

[63] *In re Gaddy*, 622 B.R. at 450 (quoting *In re Vazquez*, 325 B.R. at 37).

[64] *In re Vazquez*, 325 B.R. at 37 (citing *In re Foster Mortgage Corp.*, 68 F.3d 914, 917 (5th Cir. 1995) (emphasis in original).

consuming rounds of discovery into Debtor's prepetition and pre- and post-Conversion Date client files. The Court finds that Claimant's position is not reasonable; creditors holding valid, allowed claims have waited five years for payment in this Chapter 7 case, and they are best served by an order approving the proposed settlement so that the Trustee may pay their claims without further delay.

In addition, if the Court were to deny the Second Compromise Motion, the Trustee would continue to incur attorney's fees and other administrative expenses; if the Trustee did not recover *significantly* more than the $401,500.00 provided for in the proposed compromise, distributions to creditors (if Claimant's claim is ultimately allowed) would be diminished.[65]

The Court concludes that the fourth *Justice Oaks* factor, the paramount interest of creditors and proper deference to their reasonable views, weighs in favor of approving the proposed compromise.

5. Summary of the Court's Application of the *Justice Oaks* Factors

For the reasons explained above, the Court has found that three of the four *Justice Oaks* factors support approval of the compromise and one factor is neutral. The Court concludes that the proposed settlement satisfies the *Justice Oaks* factors.

[65] If the Court's order disallowing Claimant's claim is affirmed on appeal, all administrative claims and allowed unsecured claims in this case will be paid in full, and surplus funds held by the Trustee will be disbursed to Debtor. If the Court's ruling is (a) reversed on appeal and (b) Claimant's claim is ultimately allowed, Claimant will share *pro rata* in the distribution to unsecured creditors.

C. The Proposed Settlement Does Not Fall Below the Lowest Point in the Range of Reasonableness.

Finally, in evaluating a compromise, the Court determines whether the settlement is fair and does not fall below the lowest point in the range of reasonableness. As the court stated in *Gaddy*,

> "The concept of the 'range of reasonableness' has been defined as a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." The court should examine "the probable outcomes of the litigation, including its advantages and disadvantages, and make a pragmatic decision based on all equitable factors." "Settlements are favored in bankruptcy and appellate courts have held that a bankruptcy court's approval of a compromise must be affirmed unless the court's determination is either (1) completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data."[66]

The Court has canvassed the issues and determined that the Trustee faces significant risks in litigating the Bad Faith Motion and the Class Action Fees Motion. And even if the Trustee pursues all his claims against Debtor, it is possible that the Court would find that the estate's interest in the Class Action Fees and the Contingency Fees is *less* than the $401,500.00 that Debtor has agreed to pay in the proposed compromise. The Court concludes that the proposed settlement is fair and does not fall within the lowest point in the range of reasonableness.

[66] *In re Gaddy*, 622 B.R. at 448-49 (citations omitted).

III. CONCLUSION

For the foregoing reasons, the Court concludes that the Trustee has met his burden to demonstrate that the proposed compromise is reasonable and in the best interests of the bankruptcy estate, satisfies the *Justice Oaks* standard, is fair, and does not fall below the lowest point in the range of reasonableness.

Accordingly, it is

ORDERED that *Trustee's Renewed Motion to Approve Compromise of Controversy with Debtor* (Doc. No. 876) is **GRANTED,** Claimant's objection (Doc. No. 890) is **OVERRULED,** and the compromise between Robert E. Tardif, Jr., as Chapter 7 Trustee, and Debtor Benjamin H. Yormak is **APPROVED** in accordance with the terms set forth in the Second Compromise Motion.

The Clerk's office is directed to serve a copy of this Order on interested parties via CM/ECF.