UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 21, 2021 at 10:30 a.m.

1.	**20-23267-E-7** **FF-1**	**SHON/JILL TREANOR** **Pro Se**	**OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **12-16-20 [56]**

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, and Office of the United States Trustee on December 16, 2020. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions 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 Objection to Claimed Exemptions is overruled.

Creditor Gary Ray Fraley ("Objector") objects to Shon Jason Treanor and Jill Diana Treanor's ("Debtor") claimed exemptions under California law because the 2019 Keystone Outback Trailer ("Property") claimed as exempted was voluntarily transferred to Creditor prior to the filing of the bankruptcy petition and thus the trailer not belonging to Debtor at the time of filing, the property is not an exempted asset of the estate. Objector has filed the Declaration of Gary Ray Fraley in support of the motion.

Objector asserts that the property was voluntarily transferred by Debtor to Objector on April 2, 2020 in payment of attorney's fees pursuant to a contract signed on March 31, 2020. Declaration, Dckt. 59. Objector provides a properly authenticated copy of the registration with the Department of Motor Vehicles dated April 2, 2020. Exhibit 1, Dckt. 58.

Creditor Steven C. Sanders ("Creditor Sanders") filed an Opposition on January 7, 2021. Dckt. 64. Creditor Sanders requests the court avoid the transfer of the trailer subjected to the charging lien Creditor Sanders asserts over all of the assets of the Cheryl Gortemiller Living Trust. Creditor Sanders contends that Objector had constructive notice of the lien and that the transfer constitutes a voidable preferential transfer for work that was far below the value of the asset, namely Objector's preparation of the bankruptcy filing only.

The Chapter 7 Trustee, Hank Spacone ("Trustee") filed a Response on January 13, 2021. Dckt. 66. Like Creditor Sanders, Trustee notes that Debtor lists a claim related to the Property on their Schedule A/B. Thus, Trustee asserts Debtor represent that they no longer own the trailer but instead assert a claim based on the transfer and that Debtor are using the exemption over that claim. Trustee further notes that it seems Debtor is basing the claim over their rights to seek disgorgement of the fee received by Objector as unconscionable under California law or excessive Federal Rule of Bankruptcy Procedure 2017(a). Trustee does not dispute Debtor's exemption and has not yet determined whether the estate would benefit from avoiding the transfer. Lastly, Trustee requests that the Objection be overruled as moot and that Creditor Sanders be also overruled as a remedy that requires an adversary proceeding.

Debtor filed an Opposition on January 15, 2020. Dckt. 68. Debtor opposes the Objection, leveling a barrage of allegations against Objector regarding representation of a bankruptcy case and the events surrounding the transfer of the trailer.

The Opposition and attached supporting documents is fifty-nine pages in length. It covers events in other proceedings, conduct of other attorneys, and is based on substantive claims asserted against Objector and others, but has modest presentation of law and arguments on issue in this Contested Matter - the Objection to the Debtor's claim of exemption in the Property. Fortunately, the Trustee focuses on the issues and addresses the Objection.

DISCUSSION

California Code of Civil Procedure § 703.140 (b)(5) provides that the Debtor may exempt any asset(s) as follows:

> (5) The debtor's aggregate interest, not to exceed one thousand five hundred fifty dollars ($1,550) in value, plus any unused amount of the exemption provided under paragraph (1), in any property.

The paragraph 1 referenced is to California Code of Civil Procedure § 703.140(b)(1) that provides:

> (1) The debtor's aggregate interest, not to exceed twenty-nine thousand two hundred seventy five dollars ($29,275) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as

a residence.

This currently up to $30,825 exemption is commonly referred to as the "Wildcard Exemption" in light of a debtor being able to use any assets of the debtor, as opposed to the usual exemption statute that creates an exemption for a specific category of asset.

As asserted in the Objection, Debtor claimed the Property exempt in the amount of $21,620.00 pursuant to C.C.P. § 703.140 (b)(5) as follows:

Brief description of the property and line on *Schedule A/B* that lists this property	Current value of the portion you own Copy the value from *Schedule A/B*	Amount of the exemption you claim *Check only one box for each exemption.*	Specific laws that allow exemption
2019 Keystone Trailer VIN 4YDT2402XKB451120 Value based on FMV: $23,000 minus 6% cost of sale [$1,380] Location: Gary Fraley (SEE SOFA #16, 18) Line from *Schedule A/B*: **34.1**	**$21,620.00**	■ **$21,620.00** ☐ 100% of fair market value, up to any applicable statutory limit	C.C.P. § 703.140(b)(5)

Schedule C, Dckt. 1 at 21. Objector provides a copy of Schedule C as Exhibit 3 in Support of the Objection. Dckt. 58. Though expressly addressed in the above stated exemption, the Debtor's Statement of Financial Affairs concerning the Property is not included as an exhibit by Objector or addressed in the Objection.

On original Schedule A/B, Debtor lists as an asset under contingent and unliquidated claims paragraph the following:

34. **Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims**
☐ No
■ Yes. Describe each claim.....

2019 Keystone Trailer VIN 4YDT2402XKB451120 Value based on FMV: $23,000 minus 6% cost of sale [$1,380] Location: Gary Fraley (SEE SOFA #16, 18)	**$21,620.00**

Schedule A/B, ¶34; Dckt. 1. Debtor states a claim for the Property, the "2019 Keystone Trailer" that is stated to be located with Objector. While not expressly in legal detail a claim to rescind the transfer or recover the value, a claim to the Property is stated.

When Amended Schedule A/B was filed on August 8, 2020, Debtor amplified this contingent and liquidated claim, stating:

34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims

☐ No

■ Yes. Describe each claim.....

Potential claim against attorney Gary Fraley, in connection with disputed work performed for preparing a chapter 7 bankruptcy that was not filed and payment of those fees with transferring title and ownership of a 2019 Keystone Trailer, VIN 4YDT2402XKB451120, estimated FMV of $21,620.00. Value based on FMV: $23,000 minus 6% cost of sale [$1,380] SEE SOFA #16, 18	A	$21,620.00

Amended Schedule A/B, ¶ 34; Dckt. 19. The claim against Objector is stated with some additional detail and that it relates to the transfer of title of the Property to Objector.

In addition, Debtor provides some additional disclosures of the transfer as stated in the Statement of Financial Affairs, paragraphs 16 and 18:

Paragraph 16

Person Who Was Paid Address Email or website address Person Who Made the Payment, If Not You	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Law Offices of Gabriel Liberman, APC 1545 River Park Drive, Suite 530 Sacramento, CA 95815	Hard Cost for Bankruptcy - Filing Fee, Debtor Education, Credit Reports, Background Search.	5/5/20, 5/19/20	$430.00
Gary Ray Fraley Law Offices of Fraley and Fraley 1401 El Camino Avenue, Suite 370 Sacramento, CA 95815	2019 Keystone Trailer VIN 4YDT2402XKB451120 Value: $23,000.00 Based on retainer agreements to represent Debtors in individual chapter 7 bankruptcy cases at $9,999/case	Transfer made on 3/31/2020	$19,998.00

Paragraph 18

18. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?
Include both outright transfers and transfers made as security (such as the granting of a security interest or mortgage on your property). Do not include gifts and transfers that you have already listed on this statement.

☐ No

■ Yes. Fill in the details.

Person Who Received Transfer Address Person's relationship to you	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made
Gary Ray Fraley 7246 Manuel Street Rio Linda, CA 95673	2019 Keystone Trailer VIN 4YDT2402XKB451120 Value: $23,000.00	Traded for attorney fees and representation in Ch. 7 bankruptcy matter that was not filed and earned fees are in dispute. Based on retainer agreements to represent Debtors in individual chapter 7 bankruptcy cases at $9,999/case	3/31/2020

As discussed below, the court concurs with the Trustee that the *pro se* Debtor has asserted an exemption in the right to recover all or part of the transfer, or value thereof, of the Property.

Decision

A claimed exemption is presumptively valid. *In re Carter,* 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id*.

Here, Debtor has claimed the wildcard exemption in the Property that was transferred and the ability to recover the Property transferred or value thereof. Objector asserts since the Property was transferred to him, Debtor is precluded from claiming an exemption in that asset, the recovery of that asset, or the value of the asset from him. That is not correct. Debtor has chosen to claim the exemption in the Property, including the right to recover the Property.

As did the Trustee, Creditor Sanders "opposition" does address how the Debtor claimed the exemption and the asset, but then jumps with the Debtor in seeking affirmative relief against the Objection which is well beyond any reply permitted under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or the Local Bankruptcy Rules. In addition to "defending" Debtor's claim of exemption, Creditor Sanders then seeks an adjudication of rights he asserts, and Debtor disputes, in the Property. As the Trustee notes, these various claims, rights, and interests asserted by Debtor and by Creditor Sanders may well require, and most appear to so require, either separate adversary proceedings.

In reviewing the file, the court cannot identify any order authorizing the abandonment of any property of the bankruptcy estate. "Merely" claiming a monetary exemption in an asset, even if it is for the full value of the asset as asserted by the Debtor, does not remove the asset from the bankruptcy estate and the control of the Trustee. *Schwab v. Reilly*, 560 U.S. 770, 794 (2010). The Trustee and Debtor may want to address whether such claim will continue as property of the estate to be administered by the Trustee (if there would be value in excess of the claimed exemption amount), or whether the asset be abandoned and Debtor free to pursue the asserted claim to recover the asset in the appropriate court.

The court finds there is cause to overrule the objection to exemption on the grounds that Debtor's exemption is based on a claim against Objector and not exemption of the trailer itself.

The Objection is overruled.

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 Objection to Claimed Exemptions filed by Creditor Gary Ray Fraley

("Objector") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is overruled.

2.	**16-21585-E-11** **FWP-40** **2 thru 3**	**AIAD/HODA SAMUEL** **Pro Se**	**CONTINUED STATUS CONFERENCE RE: MOTION FOR ADMINISTRATIVE EXPENSES** **11-9-18 [1292]**

Debtor's Atty: *Pro Se*
Trustee's Atty: Jason E. Rios

Notes:
Continued from 9/3/20. Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued. Counsel further reported that the litigation with Break Master was final and that claim has been paid.

The Status Conference on the Motion for Allowance of Administrative Expense for Counsel is xxxxxxx

JANUARY 21, 2021 STATUS CONFERENCE

On January 15, 2021, the Chapter 11 Plan Administrator Scott Sackett filed a Motion for a representative be substituted for the late Hoda Samuel, a co-debtor in this Bankruptcy Case or that such substitution be waived. Dckt. 1507. Unfortunately, Mrs. Samuel passed away on August 21, 2020. Notice of Death and Motion to Continue Administration and Order; Dckts. 1496, 1506.

The Motion for substitution of a representative for the late Mrs. Samuel states that no motion for appointment of a representative has been filed by co-debtor Aida Samuel (her husband) or other representative of her estate. The Motion requests the court appoint co-debtor Aiad Samuel, Peter Samuel (Mrs. Samuel's son), other representative of Mrs. Samuel's estate, or other person. Dckt. 1507. The Motion does not indicate that either of the two named persons (naturals to be the representative) have consented and join in the relief requested.

The Motion recounts that at the hearing on the Notice of Death and Motion to Continue Administration of the Hoda Samuel Chapter 11 case, attorney Richard Jare appeared and reported that the Samuel Family was in the process of engaging his services to represent the Family. It also states that Mr. Jare and counsel for the Plan Administrator communicated in writing at the end of December 2020 and early January 2021. *Id.*, ¶¶ 9, 11, 12.

At the January 21, 2021, Status Conference **xxxxxxx**

SEPTEMBER 3, 2020 HEARING

Chapter 11 Trustee filed a Status Report on August 27, 2020. Dckt. 1488. As a preliminary matter, neither the Trustee nor the Plan Administrator are aware of any new items to be addressed although the Trustee intends to file a new motion to help bring resolution to the Debtors' litigation and delay. *Id.*, p. 3:18-20.

Trustee the following updates regarding the status of several of the open items as the Plan Administrator continues to diligently work on the administration of Debtor's estate since the court was last updated in April 2020:

A. Completing Final Tax Returns and Potential Tax Refunds- Due to delays in closing the case, the Plan administrator is currently working with his professionals to prepare the Estate's tax returns for 2019. *Id.*, p. 4:24-26.

B. Resolving the Brake Masters Class 3A Claim- However, the Superior Court has entered a final order allowing $79,052.10 in additional attorneys' fees and costs on appeal. Brake Masters served a Notice of Entry of this Order on June 5, 2020. Since the time period for the Debtors to appeal the latest Superior Court ruling, the Plan Administrator expects to pay Brake Masters the $79,052.10 additional attorneys' fees and costs for the appeal from the remaining balance of the funds reserved for the Brake Masters' claim pursuant to the Plan. *Id.,* p. 5:16-18; 20-24.

C. Resolving the USA Class 2A Secured Claim- While Hoda Samuel's challenges to the USA's enforcement of its judgment have been denied, she has now filed a motion challenging her criminal conviction, which continues to delay resolution of the USA Claim. *Id.,* p. 7:14-17.

D. Administering Final Assets: Residential rental properties located at 209 Prairie Circle and 148 Estes Way, in Sacramento, California- The tenants of the two properties have experienced hardship and loss of income due to the Covid19 pandemic. The Plan Administrator is working diligently to collect rent from these tenants by setting up deferred payment plans. Both tenants are cooperating and currently paying additional monthly rent amounts to catch up on delinquent rent payments that were missed earlier in the year. *Id.,* p. 8:17-23.

Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued. Counsel further reported that the litigation with Break Master was final and that claim has been paid.

APRIL 30, 2020 HEARING

This Chapter 11 Case has continued forward, with a series of status reports filed by the Plan Administrator, former Chapter 11 Trustee in this case. The court reviews them below collectively, as the

issues overlap.

At the April 30, 2020 Status Conference, Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued.

In light of the ongoing litigation in other courts that impact the expenses sought, the hearing is continued.

Status Conference re: Debtor Aiad Samuel filed document titled "Failure, False, and Fake Bankruptcy Services and More, See Record." Order, Dckt. 1456

On March 10, 2020, the court issued its order for a status conference concerning documents filed by Aiad Samuel. While the Document does not rise to the level of a pleading that could be construed as a motion under the Federal Rules of Bankruptcy Procedure, it set the Status Conference to afford Debtor Aiad Samuel to address the court.

Plan Administrator Status Report

The Plan Administrator has filed a Status Report for the April 30, 2020 Conference. Dckt. 1462. The Plan Administrator states that he was not provided with a copy of the notice by the Debtor, it having been sent to the Debtor's residence. Having notice, the Plaintiff Administrator reports as to the actions he has taken with respect to these mattes.

In December 2019, the Plan Administrator went to the property and met with the tenant. The tenant stated that the car was his son's and it would be removed.

The Plan Administrator returned in January 2020. The car had not been moved, but the tenant again stated it would be moved and she was "working to get the key." Additionally, that tenant would get the damaged fence fixed. The Plan Administrator had a handyman go to the property to inspect the fence.

In March 2020, the vehicle still had not been removed and the tenant had not met with the handyman. This is when the Plan Administrator first learned of the City notice. On March 23, 2020, the Plan Administrator received confirmation that the vehicle had been removed.

In April 2020, the handyman advised the Plan Administrator that he was quarantined. The Plan Administrator made arrangements with the neighbor to have the fence fixed, with the neighbor splitting the costs. The Plan estate's share is $617.00.

Debtor Aiad Samuel Status Report

On April 29, 2020, a Status Report from Debtor Aiad Samuel was filed. In the Report Mr. Samuel makes a number of statements asserting misconduct by the Chapter 11 Trustee, that Trustee's counsel, and the court (appearing to reference the prior judge to whom this case was assigned). It is asserted that properties were intentionally damaged to get the insurance monies, that properties have not been properly maintained, and that bills and taxes relating to properties were not paid.

Mr. Samuel also makes reference to the court not taking action to protect the property, not taking action on the wrongs he identified. He states that no action was taken because "the court (J) want to destroyed all my properties to buy it to themself, and this prvite plan at Sacramento, Ca. And now you know WHY? [sic]."

He continues, asserting that the Debtors' assets were sold for pennies on the dollar, that the Trustee and his attorney are deleting records, and that he and witnesses are suffering retaliation, harassment, discrimination, and harm. He then states:

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Debtor Report, p. 3. Through the Report he makes reference to as shown in the court record and files, as if he is directing the court to investigate, assemble, and advocate for Debtors.

In a prior hearing, the court had a long discussion with Mr. Samuel that the court was not the "administrator" or cases, did not undertake investigations, and did not prosecute cases for one party or the other. That is was necessary for the Debtors to obtain counsel to represent their interests, since they believe that they have been "thwarted by the system" and unable to so do. The court cannot undertake such representation or investigation.

Mr. Samuel states he has the right to go to "a different court, media and more - - - - -." *Id.* He may so properly exercise his rights.

Debtor concludes, stating that he is requesting to dismiss the bankruptcy case, have all of his assets returned. He is request to get the Trustee and Trustee's attorney thrown out of the case.

Updated Status Report on Motion for Allowance of Administrative Expense For Scott Sackett, Pre-Confirmation Chapter 11 Trustee

The Pre-Confirmation Trustee reports that the District Court Action to which the expenses relate continues. At this time, the amount of the expense cannot be determined.

Additionally, the Debtor continues with the appeal of a state court action, which may result in the increase in the claim of the creditor in that proceeding. There is also an action in the District Court effecting the United States' claim this case, which will be in favor of the United States. The Plan Administrator anticipates further appears by Debtor, which will delay the payment on the claim of the United States.

The report discusses the management of the Plan estate's assets.

Updated Status Report on Motion for Allowance of Administrative Expense For Counsel to the Pre-Confirmation Chapter 11 Trustee

Counsel's report parallels the report of the Pre-Confirmation Trustee.

3. **16-21585-E-11 FWP-41** **AIAD/HODA SAMUEL** **Pro Se** **CONTINUED STATUS CONFERENCE RE: MOTION FOR ADMINISTRATIVE EXPENSES 11-9-18 [1298]**

Debtor's Atty: *Pro Se*
Trustee's Atty: Jason E. Rios

Notes:
Continued from 9/3/20. Counsel for the Plan Administrator requested that in light of the continuing litigation in the District Court and the Ninth Circuit, this matter be further continued.

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The Motion recounts that at the hearing on the Notice of Death and Motion to Continue Administration of the Hoda Samuel Chapter 11 case, attorney Richard Jare appeared and reported that the Samuel Family was in the process of engaging his services to represent the Family. It also states that Mr. Jare and counsel for the Plan Administrator communicated in writing the end of December 2020 and early January 2021. *Id*, ¶¶9, 11, 12.

At the January 21, 2021, Status Conference **xxxxxxx**

SEPTEMBER 3, 2020 HEARING

Chapter 11 Trustee filed a Status Report on August 27, 2020. Dckt. 1490. As a preliminary matter, neither the Trustee nor the Plan Administrator are aware of any new items to be addressed although the Trustee intends to file a new motion to help bring resolution to the Debtors' litigation and delay. *Id.*, p. 3:18-20.

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Updated Status Report on Motion for Allowance of Administrative Expense For Counsel to the Pre-Confirmation Chapter 11 Trustee

Counsel's report parallels the report of the Pre-Confirmation Trustee.

4.	**20-25398-E-11**	**ALEJANDRO ALEJANDRO AND GRISELDA GONZALEZ** **Eric Wood**	**CONTINUED MOTION TO EXTEND AUTOMATIC STAY** **12-3-20 [8]**

TELEPHONIC APPEARANCE OF ERIC WOOD, ESQ., COUNSEL FOR THE DEBTOR IN POSSESSION REQUIRED

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)(3) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2020. By the court's calculation, 48 days' notice was provided. The court set the hearing for January 21, 2021. Dckt. 23.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The Court conducted the initial hearing on December 10, 2020, and continued it for a final hearing on January 21, 2021. No opposition has been filed to the Motion.

The Motion to Impose the Automatic Stay is granted.

Alejandro C. Alejandro and Griselda Gonzalez (the two Debtors who are serving as the "Debtor in Possession") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. In the Motion it is asserted that the automatic stay in this case will terminate 30 days after the filing of this case pursuant to 11 U.S.C. § 362(c)(3) unless it is extended by the court. Motion, p. 2:1-2; Dckt. 8. The Motion states little more, other than it is supported by a points and authorities, Declaration of the Debtor in Possession, exhibits, and all schedules, statements, and documents filed in this case. *Id*., p. 1:26-28.

A joint Declaration of the two individuals serving as the Debtor in Possession was filed with the Motion. Dckt. 10. In it, the factual testimony provided by the Debtor in Possession includes (identified by paragraph number in the Declaration):

2. Our prior Chapter 13 case was dismissed on August 28, 2020, because we failed to file all required bankruptcy schedules.

This would indicate that there was a prior joint case filed by the two debtors.

3. Our Prior bankruptcy case**s** [emphasis added] failed because we did not have legal counsel to assist us with the bankruptcy process.

This testimony indicates that there were multiple prior bankruptcy cases filed by the two Debtors.

The testimony continues stating that Debtor in Possession has now employed counsel for the filing and prosecution of this case. Declaration, ¶ 4. Further, Debtor in Possession believes that a Chapter 11 plan will be confirmed and performed. *Id*., ¶ 7.

Appended to the Motion, as permitted by the Local Rules when the Motion is not more than six pages in length, is a Points and Authorities. Dckt. 8, pp 3-6. The Points and Authorities provide a statement of grounds upon which the relief is sought (which are to be stated in the Motion, Fed. R. Bankr. P. 9013), legal authorities, and analysis.

Review of Prior Cases Filed by Debtors that were Pending and Dismissed Within One Year of the December 1, 2020 Commencement of the Current Bankruptcy Case

The current bankruptcy case was filed as a joint case for the two Debtors. However, the court's files disclose that there were two prior bankruptcy cases filed - separate cases by each of the two Debtors.

Case 20-22585 Chapter 13 Filed by Griselda Alejandro		**Case 20-23983 Chapter 13 Case Filed by Alejandro Alejandro**	
Filed:	May 19, 2020	Filed:	August 17, 2020
Dismissed:	June 17, 2020	Dismissed:	August 28, 2020

Each of the two cases were filed individually by each of the two Debtors, resulting in each of the two Debtors having one prior case that was pending and dismissed in the one year period preceding the current joint, and second for each of the two Debtors, bankruptcy case.

In situations where the debtor in the current bankruptcy case had a prior case that was pending and dismissed within the prior year, Congress provides in 11 U.S.C. § 362(c)(3)(A) [emphasis added]:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall **terminate with respect to the debtor** on the 30th day after the filing of the later case; . . . .

While providing for termination of the stay as to the debtor on the 30th day after the second case is filed, Congress provides in 11 U.S.C. § 362(c)(3)(B) [emphasis added] that the termination of the stay as to the debtor can be extended, stating:

> (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) **after notice and a hearing completed before the expiration of the 30-day period only** if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; . . . .

The Motion to Extend the Stay was filed on December 3, 2020 (Dckt. 8), and set for hearing on December 10, 2020 (Order, Dckt. 14). The Civil Minutes state that the final hearing on the Motion is to be conducted on January 21, 2020. The court's standard procedure for a Motion to Extend the Stay when the hearing is conducted on shortened time is to issue an interim order and set the final hearing. The issuance of an interim order is made within the 30 day period required by 11 U.S.C. § 362(c)(3)(B) and then the final hearing is conducted after parties in interest are given reasonable time to consider the relief requested.

Though the court stated at the hearing an interim order would be entered, none appears on the record. The court's oral order was not documented in a written order filed on the record.

The court can rectify this oversight by the issuance of a *nunc pro tunc* order as provided by the Supreme Court in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696, 700-701 (2020):

> Federal courts may issue *nunc pro tunc* orders, or "now for then" orders, Black's Law Dictionary, at 1287, to "reflect[ ] the reality" of what has already occurred, *Missouri v. Jenkins*, 495 U. S. 33, 49, 110 S. Ct. 1651, 109 L. Ed. 2d 31 (1990). "Such a decree presupposes a decree allowed, or ordered, but not entered, through inadvertence of the court." *Cuebas y Arredondo v. Cuebas y Arredondo*, 223 U. S. 376, 390, 32 S. Ct. 277, 56 L. Ed. 476 (1912).
>
> Put colorfully, "[n]unc pro tunc orders are not some Orwellian vehicle for revisionist history—creating 'facts' that never occurred in fact." *United States v. Gillespie*, 666 F. Supp. 1137, 1139 (ND Ill. 1987). Put plainly, the court "cannot make the record what it is not." *Jenkins*, 495 U. S., at 49.

In issuing the *nunc pro tunc* order in this case the court is having the record reflect the interim order granted, not creating something that never existed.

With respect to the issuance of the *nunc pro tunc* order, counsel for the Debtor in Possession confirmed xxxxxxx

In seeking the relief, Debtor in Possession states that the instant case was filed in good faith and explains that the previous cases were dismissed because they failed to file all of the required bankruptcy schedules and they did not have legal counsel to assist them with the bankruptcy process.

APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtors, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtors - not the bankruptcy estate. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.*, § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C). [Fn.1.]

FN. 1. While not minimizing the Debtor in Possession seeking to have the extension granted, given that all of the property to be protected by the stay is safely part of the bankruptcy estate, 11 U.S.C. § 541(a), under the control of the fiduciary Debtor in Possession, the stay as to property of the estate provided in 11 U.S.C. § 362(a)(2) is not impaired, as Congress only terminates the stay as to the debtor, such as provided in § 362(a)(1).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g.*, *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814–15.

DISCUSSION

Debtor's prior cases were dismissed after Debtor Alejandro failed to timely file documents (No. 20-22585) and after Debtor Gonzalez failed to timely file documents (No. 20-23983).

Debtor in Possession has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay. Debtor has now hired counsel and testifies to having paid upfront the attorney's fees so that they can fully prosecute this case.

The Motion is granted, and the automatic stay is imposed for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Impose the Automatic Stay filed by Alejandro C. Alejandro and Griselda Gonzalez ("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 granted, and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

FINAL RULINGS

5.	**20-24603-E-7** **BLG-1**	**ANTHONY UNTALAN** **Chad Johnson**	**MOTION TO COMPEL ABANDONMENT** **12-10-20 [20]**

Final Ruling: No appearance at the January 21, 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's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 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 Anthony Joseph Untalan ("Debtor") requests the court to order Susan K. Smith ("the Chapter 7 Trustee") to abandon property commonly known as 3990 Torrington Way, Fairfield, California ("Property"). The Property is encumbered by the lien of Freedom Mortgage Corp, securing a claim of $605,580.00. The Declaration of Anthony Joseph Untalan has been filed in support of the Motion and values the Property at $678,609.00.

Trustee does not oppose the motion. Trustee's December 11, 2020 Docket Entry Statement.

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 (not 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 Compel Abandonment filed by Anthony Joseph Untalan ("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 3990 Torrington Way, Fairfield, California and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee, Susan K. Smith ("Trustee") to Anthony Joseph Untalan by this order, with no further act of the Trustee required.

6. **17-20220-E-7** **WILLIAM/FAYE THOMAS** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEES ATTORNEY(S)**
DNL-5 **KristyHernandez** **12-16-20 [252]**

Final Ruling: No appearance at the January 21, 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, and Office of the United States Trustee on December 16, 2020. By the court's calculation, 36 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.

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Hank Spacone, 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 19, 2018, through December 4, 2020. The order of the court approving employment of Applicant was entered on July 12, 2018. Dckt. 187. Applicant requests fees in the amount of $17,867.29 and costs in the amount of $132.71.

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 Summary of Services. The Estate has $39,828.12 of unencumbered monies to be administered as of the filing of the application. 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 3.1 hours in this category. Applicant communicated extensively with Trustee and creditors and viewed Debtor's schedules.

Asset Disposition and Settlement: Applicant spent 21.7 hours in this category. Applicant assisted Trustee in selling non-exempt assets to the Debtor.

Asset Investigation and Analysis: Applicant spent 11.7 hours in this category. Applicant investigated Debtor's creation of a corporation post-petition; communicated with Trustee and third parties regarding Debtor's settlement of state court litigation; assisted Trustee with review of said settlement.

Litigation and Contested Matters: Applicant spent 5.9 hours in this category. Applicant reviewed Debtor's retirement and prepared objection to Debtor's retirement exemption.

Fee, Employment Application and Case Closing: Applicant spent 4.8 hours in this category. Applicant prepared employment and fee applications and attended the hearings.

Claims Administration and Creditor Communications: Applicant spent 3.3 hours in this category. Applicant communicated with Trustee regarding investigation of fraud claims.

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**
J. Russell Cunningham	34.40	$425.00	$14,620.00
Nicholas L. Kohlmeyer	13.00	$275.00 $225.00	$3,455.00
Former Associate	3.10	$175.00	$542.50
Total Fees for Period of Application			$18,617.50

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $132.71 pursuant to this application.

The costs requested in this Application are,

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Photocopies	$0.10 per page	$13.00
Postage		$54.11
Advances		$65.60
		$0.00
Total Costs Requested in Application		$132.71

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $17,867.29 for its fees incurred for Client. First and Final Fees and Costs in the amount of $132.71 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.

Costs & Expenses

First and Final Costs in the amount of $132.71 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.

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

Fees	$17,867.29
Costs and Expenses	$132.71

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 Desmond, Nolan, Livaich & Cunningham ("Applicant"), Attorney for Hank Spacone, 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 Desmond, Nolan, Livaich & Cunningham is allowed the following fees and expenses as a professional of the Estate:
>
> Desmond, Nola, Livaich & Cunningham, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $17,867.29
> Expenses in the amount of $132.71,
>
> 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.

7. **20-25469-E-7** **JOHN/TAMMY MOSSETT** **MOTION TO COMPEL**
AB-1 **August Bullock** **ABANDONMENT**
12-11-20 [7]

Final Ruling: No appearance at the January 21, 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, Chapter 7 Trustee, creditors, and Office of the United States Trustee on December 11, 2020. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment 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 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 John Thomas Mossett and Tammy Ann Mossett ("Debtor") requests the court to order Nikki B. Farris ("the Chapter 7 Trustee") to abandon personal property related to Debtor's flooring installation business ("Property") and the Declaration of John Thomas Mossett and Tammy Ann Mossett has been filed in support of the Motion and values the Property as follows:

Property	Value	Lien Holder / Lien Amount
2016 Dodge Ram	$42,154	Travis Credit Union ($48,511)
2014 Haulmark 6x12 enclosed trailer.	$1,000	

Wells Fargo business checking account	$20.00	
Cash	$485.00	
Tools of the Trade (numerous hand tools, carpet stretcher, carpet tracker (similar to a nail gun,) skill saw, dollies, wrenches, hammer, etc.)	$2,000	

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 (not 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 Compel Abandonment filed by John Thomas Mossett and Tammy Ann Mossett ("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:

Property
2016 Dodge Ram
2014 Haulmark 6x12 enclosed trailer.
Wells Fargo business checking account
Cash
Tools of the Trade (numerous hand tools, carpet stretcher, carpet tracker (similar to a nail gun,) skill saw, dollies, wrenches, hammer, etc.)

> and listed on Schedule A / B by Debtor is abandoned by the Chapter 7 Trustee,

Nikki B. Farris ("Trustee") to John Thomas Mossett and Tammy Ann Mossett by this order, with no further act of the Trustee required.

8.	**20-22873-E-7** **UST-1**	**KEVIN EHMKA** **James Keenan**	**MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTOR** **11-30-20 [17]**

Final Ruling: No appearance at the January 21, 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, parties requesting special notice, on November 30, 2020. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge 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 to Extend Deadline to File a Complaint Objecting to Discharge is granted; and the deadline is extended to March 1, 2021.

Tracy Hope Davis, the United States Trustee for Region 17 ("Movant"), moves to extend the deadline to file a complaint objecting to Kevin Karl Ehmka's ("Debtor") discharge because Debtor has failed to adequately explained concerns related $325,329 in priority unsecured debt amassed by the Debtor in 2019 and Debtor's relationship and various financial transactions with business entities (Above 6, LLC and Kosmo, Inc.) through document requests and informal discovery.

The deadline for filing a complaint objecting to discharge was November 30, 2020. Dckt. 16. This Motion to Extend was filed on November 30, 2020. Dckt. 17. The Motion requests that the deadline to object to Debtor's discharge be extended to March 1, 2021.

The court may, on motion and after a noticed hearing, extend the time for objecting to the

entry of discharge for cause. FED. R. BANKR. P. 4004(b)(1). The court may extend that deadline where the request for the extension of time was filed prior to the expiration of time for objection. *Id.*

The instant Motion was filed on November 30, 2020, on the deadline to object to the discharge of Debtor.

The court finds that in the interest of Movant to complete investigation, namely continuing to gather all necessary financial information about Debtor's assets and dealings with business entities, there is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for Movant to object to Debtor's discharge is extended to March 1, 2021.

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 Extend Deadline to File a Complaint Objecting to Discharge filed by Tracy Hope Davis, the United States Trustee for Region 17 ("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 is granted, and the deadline for Movant to object to Kevin Karl Ehmka's ("Debtor") discharge is extended to March 1, 2021.