

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**June 2, 2016 at 10:30 a.m.**

1. [15-91013](#)-E-7 NOEMI BARBOZA  
SCB-3

MOTION TO EXTEND DEADLINE TO  
FILE A COMPLAINT OBJECTING TO  
DISCHARGE OF THE DEBTOR  
4-18-16 [[38](#)]

**Final Ruling:** No appearance at the February 12, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct 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 April 18, 2016. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 of the Debtor is granted.**

Gary Farrar, the Chapter 7 Trustee, filed the instant Motion to Extend Deadline to File a Complaint Objecting to Discharge of the Debtor on April 18, 2016. Dckt. 38.

The Trustee states that the deadline to file a complaint objecting to the discharge of the Debtors is set for April 18, 2016. The Trustee requests that the deadline for the Trustee to file a complaint objecting to the discharge of the Debtors be extended until July 18, 2016.

The Trustee argues that cause exists because the Debtor failed to

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properly schedule real property, failed to appear at a total of five Meeting of Creditors, failed to provide documents regarding the property, and failed to provide the Trustee access to the property.

The Trustee states that the Trustee and the Debtor's counsel stipulated to the extension of the deadline to file a complaint objecting to the Debtor's discharge from February 16, 2016 through April 18, 2016. Dckt. 33.

The Trustee states that he has been diligent in his investigation of the Debtors' financial affairs. After further research the Trustee discovered that in addition to the unlisted property, the Debtor is also a joint owner of the property which is in contrast to what is reported on her schedules.

The Trustee also reports that Trustee's counsel spoke with Debtor's counsel about the instant Motion. The Trustee states that the Debtor's counsel agreed to the extension but was unable to sign a consent due to being out of the country for a family emergency.

The need for the extension, as argued by the Trustee, is due to the Debtor's delay and misconduct in failing to properly schedule estate property and failing to provide access to and information regarding the property.

Federal Rule of Bankruptcy Procedure 1017(e)(1) provides that the court may extend for cause the time for filing a motion pursuant to 11 U.S.C. § 707(b). The court may, on motion and after a hearing on notice, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 9006(b)(1).

Seeing as no objections and for cause, the court grants the Motion and extends the deadline to file a complaint objecting to discharge of the Debtors to July 18, 2016.

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 for to extend the Deadline to File a Complaint Objecting to the Discharge of the Debtors filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the deadline to file a complain objecting to discharge of the Debtors is set for July 18, 2016.

2. [10-91632-E-7](#) EDWARD/ROZEMARY ANHAR  
TPH-2

MOTION TO AVOID LIEN OF  
DATA-CENTRAL COLLECTION BUREAU,  
LLC  
5-6-16 [[34](#)]

**Tentative Ruling:** The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Data-Central Collection Bureau LLC, Valley Yellow Pages, and Office of the United States Trustee on May 6, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Data-Central Collection Bureau LLC ("Creditor") against property of Edward Nazari Anahar and Rozemary Anhar ("Debtor") commonly known as 1108 West Tuolumne Road, Turlock, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$10,637.54. An abstract of judgment was recorded with Stanislaus County on September 9, 2009, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$136,956.00 as of the date of the petition. The

unavoidable consensual liens total \$183,075.44 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) 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 judgment lien of Data-Central Collection Bureau LLC, California Superior Court for Fresno County Case No. 08CECL09025, recorded on September 9, 2009, Document No. 2009-0088358-00 with the Stanislaus County Recorder, against the real property commonly known as 1108 West Tuolumne Road, Turlock, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. [10-24942-E-13](#) CAROL RHODES-WITTICH  
CLH-1

AMENDED MOTION TO AVOID LIEN OF  
THOMAS A. HUNT, SR.  
5-19-16 [[53](#)]

**Tentative Ruling:** The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Thomas M. Hunt, Sr., Jeffrey A. Hunt, and Office of the United States Trustee on May 19, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Thomas A. Hunt, Sr. ("Creditor") against property of Carol J. Rhodes-Wittich ("Debtor") commonly known as 4115 Main Street, Fair Oaks, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,624.38. An abstract of judgment was recorded with **Sacramento** County on January 27, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$269,100.00 as of the date of the petition. The unavoidable consensual liens total \$423,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption

pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100.00 on Schedule C.

The Debtor states that she was unaware at the filing of the Abstract on the date of filing. The Creditor filed an unsecured claim which did not identify the abstract. The Debtor completed her plan on March 20, 2013.

Once Debtor discovered the abstract, the Debtor moved the court to reopen the case to properly deal with the judicial lien. Dckt. 45.

David Cusick, the Chapter 13 Trustee, filed an informational Response to the instant Motion on May 20, 2016. Dckt. 58. The Trustee states that the Creditor filed Proof of Claim No. 5 on April 1, 2010 in the amount of \$43,271.40. The Creditor did not claim any amount as secured. The Trustee paid \$4,019.18 to the creditor per the confirmed plan as indicated in the Trustee's Final Report and Account. Dckt. 33. The order approving the Final Report and Account and Discharging the Trustee was entered Jul 9, 2013. Dckt. 37. The avoiding of any lien does not alter payment of this claim as an unsecured claim, in the amount as stated on a proof of claim for which no objection was filed.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in excess of \$4,019.18 subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Thomas A. Hunt, Sr., California Superior Court for Sacramento County Case No. 34-2009-00063999, recorded on January 27, 2010, Book 20100127 and Page 0855 with the Sacramento County Recorder, against the real property commonly known as 4115 Main Street, Fair Oaks, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-25-13 [[1](#)]

Debtors' Atty: Robert M. Yaspan; Joseph G. McCarty

Notes:

Continued from 5/12/16

Operating Report filed: 5/13/16

[RMY-23] Reorganized Debtors' Motion for Final Decree Closing Chapter 11 Case filed 5/13/16 [Dckt 447], set for hearing 6/2/16 at 10:30 a.m.

5. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE  
RMY-22

MOTION FOR COMPENSATION FOR  
CHAPPELL SURVEYING SERVICES,  
SURVEYOR(S)  
4-29-16 [[438](#)]

**Final Ruling: No appearance at the June 2, 2016 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 29, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Chappell Surveying Services, the Surveyor ("Applicant") for Michael House and Judy House the Debtor in Possession ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 13, 2015 through December 22, 2015. The order of the court approving employment of Applicant was entered on June 15, 2015, Dckt. 299. Applicant requests fees in the amount of \$4,987.50.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

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(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
  - (I) reasonably likely to benefit the debtor's estate;
  - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including both field and office work to prepare the survey for the property that was resolved in the boundary suit, including creating the boundary and topographic survey and the survey map. The court finds the services were beneficial to the Client and bankruptcy estate and 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.

Field Work: Applicant spent 11.5 hours in this category. Applicant assisted Client with executing the boundary and topographic survey.

Office Work: Applicant spent 21.5 hours in this category. Applicant created the legal description, maps, and lot line adjustments and prepared the lot line adjustment survey mapping for recording.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Brett J. Chappell (Field Work)	11.5	\$200.00	\$2,300.00
Brett J. Chappell (Office Work)	21.5	\$125.00	\$2,687.50
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
<b>Total Fees For Period of Application</b>			\$4,987.50



6. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE  
RMY-23

MOTION FOR FINAL DECREE AND  
ORDER CLOSING CASE  
5-13-16 [[447](#)]

**Tentative Ruling:** The Motion for Final Decree and Order Closing Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on May 13, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Final Decree and Order Closing Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion for Final Decree and Order Closing Case is granted.**

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after an estate is fully administered in a Chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. The statutory basis for this Rule is found in 11 U.S.C. § 350(a), which states that the court is required to close a case after an estate is "fully administered and the court has discharged the trustee." This was described by the Bankruptcy Appellate Panel for the Ninth Circuit in

1999 as, "The case is closed once the estate has been fully administered and the trustee discharged by the court from responsibilities in the case. 11 U.S.C. § 350(a); Fed. R. Bankr. P. 5009." *Menk v. Lapaglia (In Re Menk)*, 241 B.R. 896, 908 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been "fully administered," the court considers whether:

- the plan confirmation order is final;
- deposits required by the plan have been distributed;
- property to be transferred under the plan has been transferred;
- the debtor (or the debtor's successor under the plan) has taken control of the business or of the property dealt with by the plan;
- plan payments have commenced; and
- all motions, contested matters and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely because plan payments have not been completed. See *id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

Here, the Chapter 11 Plan was confirmed on January 21, 2016. The Plan provided that Debtor is responsible for operating its business and making distributions in accordance with the terms of the plan. Debtors state that all distributions to be made under the plan are current and that all the post-confirmation operating reports have been filed.

The Debtors state that the second quarter report will be filed and all Trustee fees paid as required. The Trustee fees are current through the first quarter of 2016, and the second quarter will be paid as required (when due).

As indicated by the Advisory Committee Notes accompanying Fed. R. Bankr. P. 3022, entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Rather, the above-listed factors should be considered in determining whether the estate has been fully administered. As stated by Debtors, there are no outstanding deposits that require distribution under the plan and that all disputed claims have been resolved.

Upon confirmation of the Plan, the relevant property became fully vested in Debtors, who are currently managing the estate. Debtors appear to be current on all distribution under the plan and filed post-confirmation operating reports.

Thus, the court finds that Debtors have satisfactorily met the above-listed factors, determining whether the Chapter 11 bankruptcy estate has been fully administered within the meaning of 11 U.S.C. § 350(a). The court will enter an order closing Debtors' case.

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 for Final Decree and Order Closing Case filed by the Debtors-in-Possession 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 Debtors' Chapter 11 Bankruptcy Case is closed pursuant to 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, without limitation or restriction of this court's post-confirmation jurisdiction in this case.

7. [14-91091-E-7](#) DOCTOR'S MEDICAL CENTER MOTION FOR COMPENSATION BY THE  
SCB-2 FOUNDATION LAW OFFICE OF SCHNEWEIS-COE &  
BAKKEN, LLP FOR LORIS L.  
BAKKEN, TRUSTEE'S ATTORNEY(S)  
4-29-16 [[31](#)]

**Final Ruling: No appearance at the June 2, 2016 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 29, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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.**

Schneeweis-Coe & Bakken, LLP, the Attorney ("Applicant") for Irma C. Edmonds the Chapter 7 Trustee ("Client"), makes a First Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 14, 2015 through April 28, 2016. The order of the court approving employment of Applicant was entered on January 25, 2015, Dckt. 25. Applicant requests the reduced fees in the amount of \$2,820.00 and costs in the amount of \$97.00.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

### **Benefit to the Estate**

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 still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According 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?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and recovering property of the estate. The Applicant performed legal research on the procedures for when a non-profit files for bankruptcy and which funds can be properly considered funds of the estate. The estate has \$9,180.26 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and 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 3.9 hours in this category. Applicant assisted Client with preparing the instant Motion and appearance. The Applicant also spoke with Client and reviewed all files concerning the Debtor.

Efforts to Assess and Recover Property of the Estate: Applicant spent 11.5 hours in this category. Applicant researched the proper procedures for when a nonprofit files for bankruptcy, including what assets of the Debtor are properly considered property of the estate. The Applicant also researched the possible value of the bus and determination that abandonment of the bus, based on the county's lien, was in the best interest of the estate.

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:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Loris Bakken	15.4	\$300.00	\$2,917.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$2,917.00 FN.1

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**FN.1. The Applicant has voluntarily reduced the requested fees by \$1,800.00.**  
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**Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$97.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage		\$68.90
Photocopies	\$0.10 per page	\$28.10
Total Costs Requested in Application		\$97.00

**FEES AND COSTS & EXPENSES ALLOWED**

**Fees**

Applicant seeks to be paid a single sum of \$2,820.00 for its fees incurred for the Client. First and Final Fees in the amount of \$2,820.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**Costs and Expenses**

The First and Final Costs in the amount of \$97.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the 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 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$2,820.00
Costs and Expenses	\$97.00

pursuant to this Application as final fees 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 Schneweis-Coe & Bakken, LLP ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Schneweis-Coe & Bakken, LLP is allowed the following fees and expenses as a professional of the Estate:

Schneweis-Coe & Bakken, LLP, Professional Employed by Trustee

Fees in the amount of \$2,820.00  
Expenses in the amount of \$97.00,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees 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.

**Tentative Ruling:** The Motion for Redemption of Personal Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Travis Credit Union, creditors, and Office of the United States Trustee on May 12, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion for Redemption of Personal Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Redeem 2008 Mini Cooper is granted.**

Mandeep Cheema ("Debtor") seeks to redeem 2008 Mini Cooper, VIN ending in 5945 (the "Vehicle") from the claim of Travis Credit Union ("Creditor") pursuant to 11 U.S.C. § 722. Under this provision of the Bankruptcy Code, Debtor is permitted to redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt, so long as the property is exempted under 11 U.S.C. § 522 or has been abandoned under 11 U.S.C. § 554. 11 U.S.C. § 722. The right to redeem extends to the whole of the Property, not just to the Debtor's exempt interest in it. See H.R. Rep. No. 95-595, at 381 (1977). To redeem the property, Debtor must pay the lien holder "the amount of the allowed secured claim of [the lien]

holder that is secured by such lien in full at the time of redemption." 11 U.S.C. § 722. Payment must be made by a lump sum cash payment, not installment payments. *In re Carroll*, 11 B.R. 725 (B.A.P. 9th Cir. 1981). To determine the amount of the secured claim, the court looks to 11 U.S.C. § 506.

The Motion is accompanied by the declaration of Mandeep Cheema. Debtor seeks to value the Property at a replacement value of \$7,100.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien perfected on Property secures a claim of Creditor with a balance of approximately \$12,200.00. Therefore, Creditor's claim secured by the lien is under-collateralized and pursuant to 11 U.S.C. § 506(a) the court determines Creditor's secured claim to be in the amount of \$7,100.00.

An exemption in the amount of \$7,100.00 in the Property has been claimed by Debtor pursuant to California Code of Civil Procedure §§ 703.140(b)(2) and (b)(5). Since Debtor claims an exemption in the Property, Debtor is permitted to redeem the Property by paying Creditor \$7,100.00 at the time of the redemption, which payment is in full satisfaction of the secured claim.

The Motion to Redeem pursuant to 11 U.S.C. § 722 and Federal Rule of Bankruptcy Procedure 6008 is granted.

The court will issue a minute order holding that the Motion to Redeem is granted.

The court shall issue an order in 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 Redeem Personal Property filed by Mandeep Cheema ("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 Debtor is authorized and allowed pursuant to 11 U.S.C. § 722 to redeem the 2008 Mini Cooper, VIN ending in 5945 (the "Vehicle") by tendering payment to Travis Credit Union, the creditor holding the claim secured by the Property, the total amount of \$7,100.00, in full at the time of redemption, which must be paid on or before **noon on July 8, 2016**.