

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

April 12, 2016 at 2:00 P.M.

1. [15-29602](#)-C-13 REGINA JAMES  
AP-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
PENNYMAC LOAN SERVICES, LLC  
2-4-16 [[18](#)]

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**Tentative Ruling:** The Objection to Plan 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 Debtor and Debtor's Attorney on February 4, 2016. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 -----  
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**The court's decision is to . . .**

PennyMac Loan Services, LLC opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal

residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

### **Previous**

At the initial hearing held on 3/1/16, Creditor stated that the monthly payment is \$1,188.00 a month. Based on the Debtor's opposition at the hearing and the clarifications from Creditor, the hearing was continued to 2:00 p.m. on April 12, 2016, for final hearing. Opposition was ordered to be filed and served on or before March 18, 2016, and Replies, if any, filed and served on or before April 12, 2016.

### **Debtor's Supplemental Reply Dkt. 27**

The parties are engaged in settlement discussions and are presently drafting an order confirming plan that would resolve any issues.

### **Discussion**

If at the hearing, the parties have reached a settlement and have remedied issues in a proposed order confirming, the court will confirm the plan.

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 the Chapter 13 Plan filed by the PennyMac Loan Services, LLC 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 to confirmation the Plan is . . .

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**Tentative Ruling:** The Motion to Extend the Automatic Stay 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, creditors, and Office of the United States Trustee on March 25, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is extended.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-29074) was filed on September 9, 2014 and dismissed on May 7, 2015, for Debtor's failure to confirm a Chapter 13 plan. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

After the dismissal of the previous case, Debtor obtained a mortgage modification.

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). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial

excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

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, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

*Elliot-Cook*, 357 B.R. at 814-815.

Here, Debtor obtained a mortgage modification after the dismissal of the previous case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

The motion is granted and the automatic stay is extended for all purposes, unless terminated by 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 Extend the Automatic Stay the Chapter 13 Plan 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 Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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3. [15-29405](#)-C-13 RHONDA SIMS  
DPC-1 Ashley Amerio

Also #4

CONTINUED AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-9-16 [[31](#)]

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**Final Ruling:** No appearance at the April 12, 2016 hearing is required. .  
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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 and Debtor's Attorney on February 9, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 -----  
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<b>The court's decision is to continue the matter to May 24, 2016 at 2:00 p.m.</b>
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The plan relies on a pending motion to value.
2. Debtor is \$4,600 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,600 is due on February 25, 2016. Debtor has paid \$0.00 into the plan to date.

#### **Trustee's Update**

The Trustee reports that the delinquency has been cured.

#### **Discussion**

The Plan relies on the Motion to Value collateral of Moad, LLC.

At that hearing on March 15, 2016, the court set the motion to value for evidentiary hearing on April 4, 2016. The parties stipulated to continue the evidentiary hearing to May 10, 2016. Dkt. 68.

The court will decide the Objection to Confirmation after the court decides the Motion to Value. Accordingly, the hearing on this Objection to Confirmation is continued to May 24, 2016 at 2:00 p.m.

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 the Chapter 13 Plan filed by the Chapter 13 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 Objection to confirmation the Plan is continued to May 24, 2016 at 2:00 p.m.

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4. [15-29405](#)-C-13 RHONDA SIMS  
MMW-1 Ashley Amerio

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY MOAD,  
LLC  
1-7-16 [[12](#)]

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**Final Ruling:** No appearance at the April 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 7, 2016. Twenty-eight days' notice is required. That requirement was met.

The Objection to Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to continue the matter to May 24, 2016 at 2:00 p.m.</b>
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Creditor Moad, LLC opposes confirmation of the Plan on the basis that:

1. The Plan fails to provide for the secured claim of Moad, LLC.
2. Debtor has not filed schedules to support her ability to make the proposed plan payment.

#### **Discussion**

The Plan relies on the Motion to Value collateral of Moad, LLC.

At that hearing on March 15, 2016, the court set the motion to value for evidentiary hearing on April 4, 2016. The parties stipulated to continue the evidentiary hearing to May 10, 2016. Dkt. 68.

The court will decide the Objection to Confirmation after the court decides the Motion to Value. Accordingly, the hearing on this Objection to Confirmation is continued to May 24, 2016 at 2:00 p.m.

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 the Chapter 13 Plan filed by Moad, LLC 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 to confirmation the Plan

is continued to May 24, 2016 at 2:00 p.m.

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5. [10-35624](#)-C-13 ERIK/RENEE SUNDQUIST  
[14-2278](#) JRD-2  
SUNDQUIST ET AL V. BANK OF  
AMERICA, N.A. ET AL

MOTION FOR PROTECTIVE ORDER  
3-9-16 [[153](#)]

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**Tentative Ruling:** The Motion for Protective Order 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).

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.**

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

Incorrect Notice Provided. No proof of service filed.

The Motion for Protective Order 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for for Protective Order is . . .**

Following the parties' ongoing meet and confer discussions, Defendant Bank of America, N.A.'s ("BANA") respectfully requests this Court enter a Protective Order protecting BANA's confidential policies and procedures from dissemination beyond the instant litigation.

**Plaintiff's Opposition**

BANA is attempting to block Plaintiff's discovery. BANA has not demonstrated that particularized harm would result if the documents were not protected. BANA has failed to show good cause for the protective order.

**Discussion**

A protective order is an appropriate mechanism to protect a company's proprietary policies and procedures. See e.g. Fed. R. Civ. Proc. 26.

At the hearing, the court will render a decision on the motion.

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 the Chapter 13 Plan filed by the U.S. 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 Motion for Protective Order is . . .

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6. [15-25140](#)-C-13 NICHOLAS/CHERYL JOHNSON  
GW-1 Gerald White

MOTION FOR COMPENSATION FOR  
GERALD L. WHITE, DEBTORS'  
ATTORNEY  
3-8-16 [[25](#)]

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**Final Ruling: No appearance at the April 12, 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 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on March 8, 2016. 28 days' notice is required. That requirement was met.

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.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Gerald L. White, the Attorney for Debtors, ("Applicant") for Nicholas and Cheryl Johnson, ("Clients"), makes an Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June, 2015 through February, 2016. Applicant requests fees in the amount of \$4,680.00 and costs in the amount of \$310.00. Specifically, payment of pre-petition attorney fees and costs in the amount of \$2,710.00 and payment to attorney of fees and/or costs in the sum of \$2,280.00 from funds held in trust by the Chapter 13 Trustee.

#### **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 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. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees and Costs**

Applicant charged a rate of \$300.00 per hour. The \$310.00 costs are attributed the fee for filing the petition.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Total Hours 9.95 hours (Preparation and filing of petition, schedules, and plan). \$2,985.00

Total Hours 5.65 hours (Post-petition communications and confirmation of plan and review of claims). \$1,695.00

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$4,680.00
Costs	\$310.00

The Chapter 13 Trustee filed a statement of nonopposition.

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 Gerald L. White ("Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Gerald L. White is allowed the fees in the amount of \$4,680.00 and costs in the amount of \$310.00 as a professional of the Estate.

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**Tentative Ruling:** The Motion to Incur Debt 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, all creditors, and Office of the United States Trustee on March 28, 2016. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.**

The motion seeks permission to purchase a single family residence commonly known as 3827 Hillgrove Way, Carmichael, CA with the total purchase price is \$460,000. This is a cash purchase using the proceeds from the sale of Debtors' former home. In March 2016, Debtors closed escrow on the sale of their real property, which they owned at the time of the filing of this bankruptcy, and paid all allowed creditors 100%.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c) (1) (B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c) (1) (A). The court must know the details of the collateral as well as

the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Chapter 13 Trustee filed a statement of nonopposition.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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 Incur Debt filed by 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 John and Shirley Mitchell, Debtors, are authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 62.

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**Tentative Ruling:** The Motion for Adequate Protection 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 Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2016. 14 days' notice is required. This requirement was met.

The Motion to Value 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 --  
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<b>The Motion for Adequate Protection is . . . .</b>
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Creditor, Susan Schutte-Worthington, seeks relief from the automatic stay with respect to the real property commonly known as 506 Blackford Court, Sheridan, California. The moving party has provided the Declaration of Susan Schutte-Worthington and Janis Shoemaker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schutte-Worthington Declaration states that the Debtor has not made \$5,250 in rent, security deposit, and late fees in pre-petition and post-petition payments on residential property, 508 Blackford Court, Wheatland, California. Creditor is requesting that Debtors be required to pay creditor or deposit with the court the missed and current payments due under their written lease in order to provide her with adequate protection for her lease.

The Shoemaker Declaration speaks to a different real property location



altogether and does not address the subject property, 506 Blackford Court, Sheridan, California, at all. Instead, the Shoemaker Declaration provides that Ms. Shoemaker is the property manager for American Dreams Property Management, which responsibilities include managing the rental property located at 4443 Auburn Blvd. Suite A, Sacramento, California, where Debtors maintain their business, Classic Tattoo Club. The declaration provides that Debtors rented the business from July 2013 for \$1,000 per month. Movant states that she served a three-day notice to pay or quit in November 2013, four more in 2014, three more in 2015, and one more in 2016. Judgement for eviction was served on debtors and the eviction process was underway in the County of Sacramento, which have been halted due to this bankruptcy.

#### **DEBTORS' OPPOSITION**

Debtors admit that they have fallen behind in lease payments in the amount of \$6,950. Debtors have proposed a chapter 13 plan to cure the lease arrears in section 3.02 of the plan, which lists the \$6,950 as the arrearage amount with a monthly dividend of \$116 to the Chapter 13 Trustee. Debtors oppose an order requiring them to place a deposit with the court for the arrearage amount of \$6,950 as that would be inconsistent with the plan and 11 U.S.C. § 362(1) would not apply for this residential lease because the creditor landlord has not yet obtained a judgment for possession as of the date of filing.

#### **CHAPTER 13 TRUSTEE RESPONSE**

Chapter 13 Trustee responds to provide the court with further information. Trustee states that the current proposed plan lists creditor under Section 3.02 - Executory Contract and Unexpired Leases, and provides for the per-petition arrears in the amount of \$6,950 to be paid \$116 per month. Trustee understands that Debtors are to pay Creditor directly. Trustee is not opposed to the motion.

The 341 meeting is scheduled on 04/28/16. Objections to confirmation are due no later than 05/05/16 and if filed should be set for 06/14/16.

#### **DISCUSSION**

The court will render its decision upon hearing the oral arguments of the parties on April 12, 2016.

No other or additional relief is granted by the 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 for Adequate Protection filed by the creditor 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 . . . .

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**Tentative Ruling:** The Motion to Approve Loan Modification 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, creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2016. 14 days' notice is required. This requirement was met.

The Motion to Approve Loan Modification 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 -----.

<b>The Motion to Approve Loan Modification is granted.</b>
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The Motion to Approve Loan Modification filed by Gregory Patterson and Monica Patters ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage to \$435.67 a month for 480 months. The modification will set the new principle balance at \$41,154.09 with the new date of maturity on 01/01/2056.

The Motion is supported by the Declaration of Gregory Bruce Patterson. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

On April 4, 2016, Chapter 13 Trustee filed a statement of non-opposition.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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 Approve the Loan Modification filed by Debtors Bruce Patterson and Monica Patterson 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 court authorizes Bruce and Monica Patterson ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 9082 Meadowdale Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 68.

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**Final Ruling: No appearance at the April 12, 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 Defendant, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2016. 28 days' notice is required. This requirement was met.

The Motion to Disgorge 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Disgorge Fees is granted.**

Chapter 13 Trustee, David Cusick, moves the court for an order disgorging attorney's fees in the instant case pursuant to 11 U.S.C. § 329. Movant asserts that the fees received exceed the reasonable value of services rendered.

Debtors' attorney, Amy Spencer, ("Counsel") received \$1,400 prior to the filing of the case. Trustee has disbursed \$1,551.17 of the \$2,500 in fees that were to be paid pursuant to the plan, leaving a balance of \$948.83 to be paid.

This case was filed on February 28, 2014 and is active as Debtor is current on plan payments. According of section 2.06 of Debtor's plan, attorneys fees of \$3,900 were charged of which \$1,400 was received prior to the case being filed. Trustee generated multiple checks for fees involving multiple cases which were returned by the post office with a new forwarding address.

In May 14, 2015, Trustee's office contacted Debtor's counsel to urge them to update their address with the court. It has come to the attention of Trustee's office through the California bar website that Debtor's counsel status with the Bar is now inactive as of December 13, 2015. Trustee asks the court to disgorge fees in the amount of \$948.83 in this case. The motion is granted.

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 Disgorge Fees filed by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Disgorge Fees is granted and Attorney Amy L. Spencer is ordered to return \$948.83 in fees to Chapter 13 Trustee, David Cusick. Chapter 13 Trustee is authorized to disburse these funds as a refund to Debtors.

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**Tentative Ruling:** The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2016. 28 days' notice is required. This requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.</b></p>
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The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than

subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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 Exemptions 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 Objection is sustained and the claimed exemptions are disallowed in their entirety.

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**Tentative Ruling:** The Objection to Plan 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 Debtor and Debtor's Attorney on March 9, 2016. Fourteen days' notice is required. This requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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  
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**The court's decision is to sustain the Objection.**

Creditor, Patelco Credit Union, is the holder of a second deed of trust with assignment of rents - open-end line of credit in the amount of \$40,000, secured by real property commonly known as 7248 Sylvan Grove Way, Citrus Heights, California. Debtors' pre-petition arrears owed to Creditor are approximately \$430.08, and Debtors' schedules show their monthly disposable income is \$306.85, which does not include Creditor's regular monthly payment.

Debtors have listed in their plan that Creditor's claim is reduced to \$0.00 based on the value of the collateral. However, Debtors' motion to value was denied on February 23, 2016. Debtors have not proposed any ongoing payments to Creditor or payment on arrears. Debtors' plan is infeasible and in violation of 11 U.S.C. § 1325(a)(6), impermissibly attempts to modify Creditor's claim in violation of 11 U.S.C. § 1322(b)(2) and 1325(a)(5), and Debtor cannot fund the plan.



The court notes that Debtors have filed a Motion to Value the Collateral of Patelco Credit Union, Dckt Control No. SJS-1. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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 the Chapter 13 Plan filed by the Creditor Patelco Credit Union 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 to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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**Final Ruling:** No appearance at the April 12, 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 26, 2016. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.**

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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 Confirm the Chapter 13 Plan 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 Motion is granted, Debtor's Chapter 13 Plan filed on February 26, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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