

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II

Hearing Date: Thursday, February 16, 2017

Place: Department B – Courtroom #13

Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 A.M.

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| 1. 15-10039 -B-12 ANGELA PIMENTEL
MHM-1
MICHAEL MEYER/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING | MOTION TO MODIFY CHAPTER 12
PLAN
1-9-17 [119] |
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The motion will proceed as scheduled.

This matter was fully noticed in compliance with the Local Rules of Practice and only the debtor has responded with a qualified non-opposition. Accordingly, the other respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The chapter 12 trustee has filed a proposed modified chapter 12 plan to which the debtor has responded.

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| 2. 16-13345 -B-11 JONATHAN/PATRICIA MAYER

PETER FEAR/Atty. for dbt. | CONTINUED STATUS CONFERENCE RE:
CHAPTER 11 VOLUNTARY PETITION
9-13-16 [1] |
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Based on the U.S. Trustee's status report filed February 10, 2017, this status conference will be continued to March 2, 2017, at 9:30 a.m., to track with the debtors' motion to approve a settlement and the U.S. Trustee's motion to dismiss the case. The court will enter an order. No appearance is necessary.

1:30 P.M.

1. [16-14301](#)-B-13 JOSE GONZALES
SW-1
ALLY BANK/MV

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-2-17 [[22](#)]

JOEL WINTER/Atty. for dbt.
ADAM BARASCH/Atty. for mv.

This matter will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

2. [16-13707](#)-B-13 RAUL/MARGARITA LEAL
TOG-1
RAUL LEAL/MV
THOMAS GILLIS/Atty. for dbt.

MOTION TO CONFIRM PLAN
12-30-16 [[25](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

3. [16-12310](#)-B-13 ROBIN RANK
JDR-1
NILES KANT/MV
F. GIST/Atty. for dbt.
JEFFREY ROWE/Atty. for mv.
RESPONSIVE PLEADING

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-29-16 [[32](#)]

This motion will be denied as moot. The court will enter an order. No appearance is necessary.

This motion was continued to permit the debtor to file a response supported by additional evidence. The debtor did not file such a response.

The court previously granted the motion to confirm the debtor's plan [FJG-1] January 26, 2017, and, upon confirmation, the automatic stay was modified as to §3.02 to permit the creditors to exercise their rights under applicable state law, to regain possession of the property only, and not as to any pre-petition damages.

4. [16-14414](#)-B-13 GERARDO REYES
MWP-1
WEST COAST CAPITAL GROUP,
INC./MV
THOMAS GILLIS/Atty. for dbt.
MARTIN PHILLIPS/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY WEST COAST CAPITAL
GROUP, INC.
1-31-17 [[26](#)]

This objection to confirmation of the chapter 13 plan will be overruled without prejudice. No appearance is necessary. The court will enter an order.

The debtor has filed and set for hearing a modified plan. The debtor also filed a notice of non-opposition to the objection, however, upon filing the modified plan, the plan to which this objection relates is deemed withdrawn.

The court notes that the trustee has not yet concluded the meeting of creditors and the date set for a hearing on the modified plan is fewer than 20 days after the continued \$341 date.

5. [16-13415](#)-B-13 JUAN/ETELVINA PEDROZA
MHM-2
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
1-9-17 [[38](#)]

This motion will be continued to March 29, 2017, at 1:30 p.m., to be heard with the motion to confirm a modified plan. The court will enter an order. No appearance is necessary.

6. [16-13415](#)-B-13 JUAN/ETELVINA PEDROZA
TOG-1
JUAN PEDROZA/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
12-1-16 [[23](#)]

This motion will be dropped as moot. The debtors have filed a motion to confirm a modified plan, TOG-2, and therefore this motion is deemed withdrawn. The court will enter an order. No appearance is necessary.

7. [16-12736](#)-B-13 JOSE GUIZAR AND SYLVIA MOTION TO MODIFY PLAN
TOG-2 RIVERA 1-5-17 [[33](#)]
JOSE GUIZAR/MV
THOMAS GILLIS/Atty. for dbt.

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

8. [16-13237](#)-B-13 GUADALUPE ZAMUDIO MOTION TO VALUE COLLATERAL OF
JDW-2 SPECIALIZED LOAN SERVICING, LLC
GUADALUPE ZAMUDIO/MV AND/OR MOTION TO VALUE
COLLATERAL OF FV-I, INC. ,
MOTION TO VALUE COLLATERAL OF
MORGAN STANLEY MORTGAGE CAPITOL
HOLDINGS, LLC.
1-11-17 [[42](#)]

JOEL WINTER/Atty. for dbt.

The motion will be granted without oral argument based upon well-pled facts. The debtor shall submit a proposed order consistent with this ruling as set forth below. No appearance is necessary.

This motion to value the collateral for a consensual lien against real property was fully noticed in compliance with the Local Rules of Practice and there was no opposition. Accordingly, the respondent's default will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal* (826 F.2d 915, 917 (9th Cir., 1987)). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Based on the evidence offered in support of the motion, the respondent's junior priority mortgage claim is found to be wholly unsecured and may be treated as a general unsecured claim in the chapter 13 plan. The debtor may proceed under state law to obtain a reconveyance of respondent's trust deed upon completion of the chapter 13 plan and entry of the discharge. If the chapter 13 plan has not been confirmed, then the order shall specifically state that it is not effective until confirmation of the plan.

This ruling is only binding on the named respondent in the moving papers and any successor who takes an interest in the property after service of the motion.

9. [16-13237](#)-B-13 GUADALUPE ZAMUDIO
MHM-2
MICHAEL MEYER/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO DISMISS
CASE
12-2-16 [[29](#)]

Unless it is withdrawn before the hearing, the trustee's motion to dismiss the case will be denied as moot. The court will enter an order. No appearance is necessary.

The trustee's motion is based on the debtor's failure to file a motion to value a junior deed of trust on their residence. The debtor has filed and properly served the required motion, above at calendar number 8, DC# JDW-2. No further relief appears to be required.

10. [13-14140](#)-B-13 JIM/PAMILA HESTILY
SL-4
JIM HESTILY/MV
STEPHEN LABIAK/Atty. for dbt.

MOTION TO MODIFY PLAN
12-9-16 [[80](#)]

The motion will be denied without prejudice. The court will enter an order. No appearance is necessary.

This motion to modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered.

The debtors have been in bankruptcy nearly four years and now propose to move a vehicle, the 2009 Lexus, listed in class 2 of the current confirmed plan, to class 3, to be surrendered. However, pursuant to the moving papers they do not actually plan to return the car to the holder of that secured claim, Lexus Financial. Lexus Financial filed a secured claim for \$22,084.14. The debtors do not list an estimated deficiency on this claim which would have to be paid by them in order to obtain their discharge at the end of the plan. They instead now want the secured creditor to rely on the co-signer, their daughter, only. However, there is no evidence that either the creditor or the debtors' daughter has agreed to this new arrangement, that the daughter is able to perform under the contract, the current balance of the secured debt or the current value of the vehicle.

The debtors confirmed this plan in 2013 and chose to treat the subject vehicle in class 2 as fully secured to be paid in full within the terms of their 60-month plan. They are not surrendering the vehicle to the lien holder to be sold but are instead, in effect, seeking a discharge of this secured debt. At this late date the debtors cannot now get a discharge of any difference between the amount still owing on the vehicle and its value upon sale by the creditor.

However, if the debtors reach a stipulation regarding the treatment of this claim with the secured creditor by which the creditor waives any deficiency as against the debtors, then they may submit a proposed confirmation order with said stipulation attached for the trustee's and the court's review.

The court notes that Toyota Motor Credit Corporation has filed a motion for relief from stay as to the 2009 Lexus which has been set for a hearing on March 2, 2017. The motion shows that the last payment received on this account was October 11, 2016, that the account is eight payments delinquent post-petition for a total of \$3,488.41, and that the principal still owing is \$7,729.12.

11. [12-19946](#)-B-13 TERRY/JODEL KING
DRJ-3
TERRY KING/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
12-21-16 [[73](#)]

This motion will be set for a continued hearing on March 16, 2017, at 1:30 p.m. The court will issue an order. No appearance is necessary.

The trustee has filed a detailed objection to the debtors' fully noticed motion to confirm a chapter 13 plan. Unless the trustee's opposition to confirmation has been withdrawn, the debtors shall file and serve a written response not later than March 2, 2017. The response shall specifically address each issue raised in the opposition to confirmation, state whether the issue is disputed or undisputed, and include admissible evidence to support the debtor's position. If the debtors elect to withdraw this plan and file a modified plan in lieu of filing a response, then a confirmable modified plan shall be filed, served, and set for hearing, not later than March 9, 2017. If the debtors do not timely file a modified plan or a written response, the motion to confirm the plan will be denied on the grounds stated in the opposition without a further hearing.

It appears that the issues in controversy include:

1. Whether the debtors, who originally filed a chapter 13 case that was subsequently converted to chapter 7, and which has now been reconverted to chapter 13, may confirm a modified plan that extends beyond the original 60-month limit of §1329(c) (see, e.g., *West v. Costen*, 826 F.2d 1376, 1378 (4th Cir., 1987); *In re Martin*, 156 B.R. 47, 50 (BAP 9th, 1993) ("The 60 month time period begins to run from the date the first payment becomes due after confirmation of the debtor's Chapter 13 plan."); 8 Collier on Bankruptcy ¶ 1329.07 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.)).
2. The effect of the conversion to chapter 7 on the status of the previously-confirmed chapter 13 plan (see, e.g., *In re Yao*, 548 B.R. 818 (Bankr. D. N.M. 2016)).

This case has already been reconverted pursuant to a stipulation between the U.S. Trustee and the debtors after the U.S. Trustee filed a motion to dismiss the chapter 7 case under §707(b). What is not at issue is the question of whether or not the Code *per se* prohibits reconversion from chapter 7 to chapter 13 in a case originally filed as chapter 13.

12. [16-13848](#)-B-13 ROBERT/NANCY FLORES MOTION TO DISMISS CASE
MHM-1 1-12-17 [[23](#)]
MICHAEL MEYER/MV
GLEN GATES/Atty. for dbt.
RESPONSIVE PLEADING

This matter was fully noticed in compliance with the Local Rules of Practice and the debtors filed a notice of non-opposition. Accordingly, the motion will be granted and the case will be dismissed. The court will enter an order. No appearance is necessary.

13. [16-14350](#)-B-13 ADAM/CHRISTINA RAMIREZ MOTION TO DISMISS CASE
MHM-1 1-30-17 [[26](#)]
MICHAEL MEYER/MV
DISMISSED

This case has already been dismissed. No appearance is necessary.

14. [11-12856](#)-B-13 JACK/AMELIA WISEMAN MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 1-3-17 [[64](#)]
SCOTT LYONS/Atty. for dbt.
JAMIE HANAWALT/Atty. for mv.
RESPONSIVE PLEADING

This matter will proceed as a scheduling conference to set an evidentiary hearing. Factual issues include:

- 1. The debtors' payments to movant between July 2016 and the present;**
- 2. The movant's alleged failure to refund an overpayment to the trustee.**

15. [15-10257](#)-B-13 JUAN CALVILLO CONTINUED MOTION TO MODIFY PLAN
MAZ-3 11-9-16 [[91](#)]
JUAN CALVILLO/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING

The trustee's opposition has been withdrawn. Accordingly, the motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; the trustee's opposition has been withdrawn and there is no other opposition. Those respondents' defaults will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

16. [16-12960](#)-B-13 GAYNE ALEXANDER
DRJ-2
GAYNE ALEXANDER/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO CONFIRM PLAN
12-22-16 [[35](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

17. [16-10866](#)-B-13 MICHELLE YORK
DRJ-3
MICHELLE YORK/MV
DAVID JENKINS/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO CONFIRM PLAN
12-27-16 [[141](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; Peoplease has filed a statement of non-opposition. No party has filed an opposition and those respondents' defaults will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

18. 16-10169 -B-13 FRANK/MARY ANNE DORES AMM-2 BUNNETT & CO., INC./MV PETER FEAR/Atty. for dbt. MATTHEW PREWITT/Atty. for mv.	PRE-TRIAL CONFERENCE RE: MOTION TO DISMISS CASE 8-17-16 [161]
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This matter will proceed as scheduled. Telephonic appearances will be permitted.

19. 16-10169 -B-13 FRANK/MARY ANNE DORES FW-1 FRANK DORES/MV PETER FEAR/Atty. for dbt. PETER SAUER/Atty. for mv. RESPONSIVE PLEADING	PRE-TRIAL CONFERENCE RE: MOTION FOR CONTEMPT 1-28-16 [7]
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This matter will proceed as scheduled. Telephonic appearances will be permitted.

20. 16-10169 -B-13 FRANK/MARY ANNE DORES FW-1 BUNNETT & CO., INC./MV PETER FEAR/Atty. for dbt. MATTHEW PREWITT/Atty. for mv. RESPONSIVE PLEADING	PRE-TRIAL CONFERENCE RE: AMENDED COUNTER MOTION FOR RELIEF FROM AUTOMATIC STAY 3-15-16 [73]
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This matter will proceed as scheduled. Telephonic appearances will be permitted.

21. [15-11172](#)-B-13 FELIPE/AURORA ALVARADO MOTION TO DISMISS CASE
MHM-4 1-18-17 [[91](#)]
MICHAEL MEYER/MV
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING

If the trustee's motion is not withdrawn prior to the hearing, this matter will proceed as scheduled.

22. [14-11175](#)-B-13 DANNY/SARA BAEZA CONTINUED MOTION TO MODIFY PLAN
KNM-4 11-30-16 [[78](#)]
DANNY BAEZA/MV
KARNEY MEKHITARIAN/Atty. for dbt.
RESPONSIVE PLEADING

This motion was continued to permit the debtors to respond to the trustee's opposition to the modified plan or to file a new modified plan. On February 2, 2017, the debtors filed a new modified plan, DC# KMM-5, which is set for a hearing on March 16, 2017. Accordingly, this plan will be deemed withdrawn. The court will enter an order. No appearance is necessary.

23. [16-12984](#)-B-13 REFUGIO GUTIERREZ CONTINUED MOTION TO CONFIRM
TOG-5 PLAN
REFUGIO GUTIERREZ/MV 11-29-16 [[40](#)]
THOMAS GILLIS/Atty. for dbt.
RESPONSIVE PLEADING, FIRST
AMENDED PLAN WITHDRAWN

This motion to confirm a chapter 13 plan has been withdrawn. No appearance is necessary.

The court has reviewed the debtor's Supplemental Response and Notice of Settlement of Claims and Debtor's Intent to Dismiss the Case After the Settlement Agreement is Signed, filed February 9, 2017, docket # 55, and the request to continue matters on the calendar for three weeks. The court notes that there appear to be no pending motions and therefore no matters to continue.

24. [16-13487](#)-B-13 SHANIE MATEIRO
HDP-2
TRINITY FINANCIAL SERVICES
LLC/MV
AMANDA BILLYARD/Atty. for dbt.
HENRY PALOCI/Atty. for mv.
RESPONSIVE PLEADING

MOTION TO RECONSIDER
1-19-17 [[45](#)]

The hearing will proceed as scheduled. The court intends to enter the below tentative ruling.

Tentative Ruling: The motion will be granted. Trinity Financial Services LLC's default will be set aside as to chapter 13 plan confirmation only. Trinity Financial Services LLC is relieved of its failure to timely file and serve an objection to confirmation of the Debtor's chapter 13 plan dated and filed October 4, 2016 (Doc. No. 11) and confirmed January 9, 2017. (Doc. No. 44.) This order does not affect any other order in this case. The court will issue an order after hearing.

Trinity Financial Services LLC ("Trinity" or "Movant") did not timely respond to debtor Shanie Mateiro's ("Debtor") motion to confirm a chapter 13 plan by filing an objection and a notice of hearing as required under LBR 3015-1(c)(4). That rule provides in part that "absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing." The Debtor's plan was confirmed January 9, 2017. In this motion, filed January 19, 2017, Trinity seeks relief under FRCP 60 (made applicable to contested matters pursuant to FRBP 9024), to have its default set aside.

Trinity's claim is allegedly secured by a second deed of trust on the Debtor's real estate at 12349 Sierra View, Boron, California, 93516 ("Boron Property"). Trinity makes four arguments in support of its motion. First, Trinity claims that Mr. Paloci, its counsel, was entitled to direct notice of the commencement of this chapter 13 case and filing of the plan under FRBP 7005. Second, Trinity argues that Official Form 309I [or "Official Form" or "Form"] as used in this District did not provide adequate notice to Trinity. Third, Trinity contends it has a meritorious defense to confirmation because, Trinity contends, it is at least partially secured by the value of the Boron Property. Finally, Trinity argues that it should be relieved of the default because of "excusable neglect." Trinity relies upon FRCP 60(b)(1) for its "excusable neglect" argument and sweeps the other arguments under the "catch all" of FRCP 60(b)(6).

In response, the Debtor argues that Official Form 309I provides sufficient notice. The Debtor also argues that this court has denied without prejudice Trinity's motion to vacate the order valuing Trinity's collateral (HDP-1). (Doc. No. 58.) Debtor claims the arguments raised by Trinity have already been disposed of by the court and, accordingly, this motion should be denied.

With the exception of the "excusable neglect" arguments, Trinity's positions are without merit.

1. Type and Sufficiency of Notice. Trinity's argument that its counsel, Mr. Paloci, was entitled to notice under FRBP 7005 fails. While objections to confirmation of chapter 13 plans are governed by FRBP 9014 (FRBP 3015(f)), Rule 9014 provides that its provisions apply "in a contested matter *not otherwise governed by these rules*" (emphasis added). Trinity's argument presumes that FRBP 7005 would apply when, in fact, FRBP 9014 requires service upon counsel of record "after the motion." FRBP 9014(b). Trinity never filed a Request for Notice in this case after receiving the notice of commencement of case.

Federal Rule of Bankruptcy Procedure 2002(b) provides 28 days' notice "for filing objections and the hearing to consider confirmation of a . . . chapter 13 plan." Federal Rule of Bankruptcy Procedure 2002(g) deals with addressing those notices in the absence of a request filed "in the particular case." Notices shall be mailed to the address shown on the list of creditors or schedule of liabilities, whichever is filed later. FRBP 2002(g)(1), (2). Absent is any proof in support of the motion that Trinity filed a request designating a mailing address or that it has filed a notice under 11 U.S.C. § 342(f). Accordingly, the court presumes, in the absence of evidence to the contrary, that the address shown on the list of creditors filed with the Debtor's petition is the correct address.

Here, Trinity was served (Official Form 309I) on October 9, 2017. (Doc. No. 15.) The notice was sent to Trinity Financial LLC in care of Special Default Services, 17100 Gillette Avenue, Irvine, California, 92614-5603. Notably, that is the same address to which the notice of this Debtor's earlier chapter 7 filing (case number 16-11242) was sent. (Chapter 7-doc. No. 1.)

Trinity's objection to the content of the notice provided by Official Form 309I also lacks merit. The notice of filing of chapter 13 case and information regarding the Debtor's filing of the plan and the procedure to object to the plan was contained on an Official Form. Federal Rule of Bankruptcy Procedure 9009 provides in relevant part:

"[T]he Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economy in their use. . . . *The forms shall be construed to be consistent with these rules and the [Bankruptcy] Code.*" (Emphasis added.)

Thus, notwithstanding Trinity's objection, this court is compelled to construe Official Form 309I to be consistent with both Bankruptcy Rules and the Bankruptcy Code.

Even without that mandate, Trinity's argument lacks merit. The Official Form in this case, (Doc. No 14), states in bold type, *inter alia*, "Read both pages carefully." The Form states that information on both pages addresses the meeting of creditors and deadlines. On the second page of the Official Form, in bold type at number 9, is the heading, "Filing of plan." The Form then clearly explains the process for objecting to confirmation consistent with LBR 3015-1. The court disagrees that the Official Form is not adequate notice.

The fact that counsel for Trinity appeared in the Debtor's prior case, the chapter 7, and obtained an order for relief from the automatic stay on behalf of Trinity does not change this analysis. In the Debtor's chapter 7 case Trinity was served with the notice of commencement of case at the same address it was served with the notice of this chapter 13 case. (Ch. 7 - Doc. No. 1.) Trinity filed two motions for relief from stay in the chapter 7 case. The first (ch. 7 - Doc. No. 21) was denied for lack of service. The second motion (ch. 7 - Doc. No. 32) was granted. The Debtor received her chapter 7 discharge on August 15, 2016 (ch. 7 - Doc. No. 33) and the case was closed with the issuance of a final decree on August 19, 2016 (ch. 7 - Doc. No. 36). Trinity was served with the chapter 7 Official Form 309(A) (ch. 7 - Doc. No. 5) at the same address. Trinity filed motions for relief from stay in the chapter 7 case after receiving the Official Form notice. Thus, Trinity's challenge to the content of the notices it received in this case lacks merit.

2. Meritorious Defense. Trinity claims that it has a meritorious defense to the position taken by the Debtor in her motion to value Trinity's collateral interest in the Boron property. The argument is inapplicable to this motion. The court addressed the evidentiary deficiencies in its prior ruling denying, without prejudice, Trinity's motion to vacate the valuation order. (HDP-1; Doc. No. 58.) Those reasons will not be repeated here. The court incorporates by reference its ruling on that motion as applicable.

3. Trinity's "Excusable Neglect." Trinity invokes FRCP 60(b)(1) which permits the court, on just terms, to relieve a party from an order because of "mistake, inadvertence, surprise, or excusable neglect." (FRBP 9024.) In the context of late-filed claims, The Supreme Court in *Pioneer Investments Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 392 (1993), set forth a four-part test for the court to apply when a party seeks relief on the ground of excusable neglect. The Ninth Circuit has adopted that test in other contexts. See *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381-82 (9th Cir. 1997). Application of that test here supports Trinity's request for relief from the failure to timely respond to the Debtor's motion to confirm her chapter 13 plan.

A. Danger of Prejudice to Parties. Here, the Debtor has provided no evidence of how the Debtor would be prejudiced if Trinity's default was set aside. Prejudice can be shown by evidence that delay caused by setting aside the default resulted in loss of evidence, increased the difficulty of

discovery or that it thwarted a party's ability to obtain relief. It is not prejudicial or harmful to require a party to prove its case. *TCI Group Life Insurance Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir., 2001). On the other hand, Trinity is, in part, prejudiced by the inability to object to plan confirmation. The real issue for Trinity is the value of the Boron property. In this District, LBR 3015-1(j) requires the debtor to file, serve and set for hearing any valuation motions which must then be concluded before or in conjunction with the confirmation of the plan. The Debtor did that here. Trinity sought relief from the order valuing its interest. The court denied that motion without prejudice. Until that order is vacated, "opening Trinity's default" in connection with confirmation of the plan will not change the *status quo*. Hence, in weighing the prejudice, the Debtor has not proven how or why the Debtor would be prejudiced versus some prejudice suffered by Trinity.

B. The Length of Delay and Its Potential Impact on Judicial Proceedings. There is very little delay here. The Debtor's plan was confirmed January 9, 2017, and this motion was filed 10 days later. As mentioned above, further judicial proceedings in this matter are not affected unless and until the order valuating Movant's interest in the Boron property is vacated.

C. The Reason for the Delay. This element is inapplicable since there is very little delay. The court has already addressed why Trinity's challenges to the notice of the chapter 13 case and the chapter 13 plan lack merit.

D. Whether the Parties Seeking to be Excused from Neglect Acted in Good Faith. The Debtor provided no evidence to suggest that Trinity lacks good faith. Trinity has established a "reasonable excuse" for the default. *Meadows v. Dominican Republic*, 817 F.2d 517, 520 (9th Cir., 1987). The distinguishing difference here, compared to Trinity's unsuccessful motion to vacate the valuation order, is the nature of the "notice" provided to Trinity in the chapter 13 case. "Service" of the motion to value is another matter as the court has discussed in its ruling on HDP-1. The impact of the notice of commencement of case may not have been fully comprehended by Trinity. Counsel for the Debtor was aware that Mr. Paloci represented Trinity in the chapter 7 case and adding his name and address to schedules or service lists is certainly not burdensome; this court is aware that quite often debtor's counsel add attorney's names as "additional parties to receive notice." Debtor's opposition to this motion did not provide any evidence why that could not be done in this case.

Since the court is granting the motion on the grounds of Trinity's "excusable neglect," the court will not address Trinity's contention that the "catch all" provisions of FRCP 60(b)(6) are even applicable.

25. [16-12690](#)-B-13 KIMBERLY SHACKELFORD
SAH-3
KIMBERLY SHACKELFORD/MV
SUSAN HEMB/Atty. for dbt.

MOTION TO CONFIRM PLAN
12-16-16 [[79](#)]

The motion will be granted without oral argument based on well-pled facts. No appearance is necessary. The movant shall submit a proposed order as specified below.

This motion to confirm or modify a chapter 13 plan was fully noticed in compliance with the Local Rules of Practice; there is no opposition and the respondents' default will be entered. The confirmation order shall include the docket control number of the motion and it shall reference the plan by the date it was filed.

26. [16-10294](#)-B-13 LINA CONTRERAS
WAR-1
LINA CONTRERAS/MV
WILLIAM ROMAINE/Atty. for dbt.
RESPONSIVE PLEADING

CONTINUED MOTION TO CONFIRM
PLAN
11-30-16 [[87](#)]

The bar date for confirmation of a chapter 13 plan will be extended to April 13, 2017. Based on the declaration filed by debtor's counsel, the debtor's motion to confirm a plan will be continued to April 13, 2017. The debtor's response shall be filed and served by March 30, 2017. Any reply shall be filed and served by April 6, 2017. The court will enter an order. No appearance is necessary.

If a plan is not confirmed at this continued hearing then the court will dismiss the case without further notice. 11 USC § 1307(c)(1), (5).

27. [13-15896](#)-B-13 KAREN SHARPE
BCS-5

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF SHEIN LAW GROUP,
PC DEBTORS ATTORNEY(S)
1-18-17 [[82](#)]

The motion for compensation will be denied without prejudice. The record does not show that the client consented to the fees and costs sought. The court will enter an order. No appearance is necessary.

28. [13-16888](#)-B-13 JIL STARKEY
DRJ-3
JIL STARKEY/MV
DAVID JENKINS/Atty. for dbt.
OST 2/7

MOTION TO ENTER INTO COMMERCIAL
LEASE AGREEMENT
2-7-17 [[36](#)]

This matter will proceed as scheduled. The court notes that the other party to the subject lease was not served with the motion, there is no notice of this hearing filed in the docket, and the copy of the lease agreement filed as an exhibit has not been signed by anyone.

The court also notes that at the time of filing this case the debtor was a lessee under a commercial lease with ADAC; that lease was rejected by the terms of the confirmed chapter 13 plan.

29. 15-11302-B-13 DENISE WILEY
RSW-4
DENISE WILEY/MV

CONTINUED MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROSEDALE-RIO
BRAVO WATER STORAGE DISTRICT
1-17-17 [79]

ROBERT WILLIAMS/Atty. for dbt.

This matter was continued to permit counsel for debtor to file an amended proof of service that complies with the local rules. The amended proof of service having been filed, the motion will proceed as scheduled.

Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.