UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 17, 2014 at 10:00 a.m.

---

1. 09-42310-A-12 ERIC ANTHEUNISSE — MOTION TO DISMISS CASE
JPJ-1 — 2-5-14 [206]

Tentative Ruling: The motion will be conditionally denied.

The chapter 12 trustee moves for dismissal because the debtor is $44,100 delinquent under the terms of the chapter 12 plan, representing seven plan payments.

The debtor responds to the motion, claiming that he will be current on plan payments before the hearing on this motion.

Secured creditor Ocwen Loan Servicing has filed a joinder to the trustee's dismissal motion, urging the court to dismiss the case.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including . . . (6) material default by the debtor with respect to a term of a confirmed plan."

Ocwen's joinder to the motion will be stricken. The civil and bankruptcy rules do not allow for the joinder of parties to motions or oppositions to motions.

As the debtor has not made seven payments under the plan, he is in material default for purposes of 11 U.S.C. § 1208(c)(6). This is cause for dismissal. Given the debtor's response, however, the motion will be denied on the condition that the debtor has brought all plan payments - including any payments due under the plan since the filing of the motion - current with the trustee. The motion will be conditionally denied.

2. 13-32417-A-11 BALBIR/SAWARNJIT SEKHON — MOTION TO DISMISS CASE
MRL-10 — 2-20-14 [125]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtors are asking the court to dismiss this case as their son is about to purchase the loan held by their principal creditor, Oceanic, secured by the hotel property that serves as the debtors' principal source of income.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court

determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

The purchase of Oceanic's claim by the debtors' son will reduce the principal on the loan by $250,000 and will allow the debtors to pay other debt. Oceanic has signed a stipulation for the dismissal of the case.

Given that the debtors' inability to maintain payments on account of Oceanic's claim was their principal reason for filing this bankruptcy case, the purchase of the claim by their son is cause for dismissal of the case. Dismissal is in the best interests of the creditors and the estate because the debtors desire to continue operating the hotel property, desire to continue generating income from the property, and desire to continue paying their creditors in the ordinary course of business. The motion will be granted and the case will be dismissed.

3.	13-32417-A-11 PJR-1 TRI COUNTIES BANK VS.	BALBIR/SAWARNJIT SEKHON	MOTION FOR RELIEF FROM AUTOMATIC STAY 2-11-14 [115]

Tentative Ruling: This stay relief motion with respect to the debtors' residence will be dismissed as moot, given that the court is dismissing the case. See 11 U.S.C. § 362(c)(2)(B); Docket 125 (DCN MRL-10). The motion is not seeking retroactive or in rem relief.

4.	13-34541-A-11 CAH-9 VS. J P MORGAN CHASE BANK, N.A.	6056 SYCAMORE TERRACE LLC	MOTION TO VALUE COLLATERAL 2-7-14 [85]

Tentative Ruling: The motion will be granted.

The debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $1,920,000 in an effort to strip down JPMorgan Chase Bank's first approximately $2,231,587 ($2,250,700.10 per proof of claim) mortgage on the property and treat it as a partially unsecured claim. The property is not the debtor's residence.

JPMorgan Chase Bank opposes the motion, asserting that this motion is barred by res judicata because the court's ruling on the debtor's prior valuation motion adopted Chase's $2,250,000 valuation of the property and rejected the debtor's $1,600,000 valuation.

Res judicata or claim preclusion bars the litigation in a subsequent action of any claims that were raised or could have been raised in the prior action. Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001) (citing Western Radio Servs. Co. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997)). In order for res judicata to apply, three elements must be met (1) identity of claims, (2) final judgment *on the merits*, and (3) privity between the parties. Headwaters, Inc. v. United States Forest Serv., 399 F.3d 1047, 1052 (9th Cir. 2005).

The prior valuation motion was heard and denied on January 21, 2014. Dockets 67 & 77. The parties to that motion are the same as the parties to this motion, the debtor and JPMorgan Chase Bank.

In the prior motion, the debtor sought a valuation of the property at $1,600,000, while Chase responded with its own valuation at $2,250,000, based

on an appraisal. The court denied the prior motion, siding with the valuation proffered by Chase. The court's order denying the motion is now final as it was entered on January 23, 2014 and it was not appealed. Docket 77.

Although the court stated in its ruling on the prior motion that it "adopts JPMorgan Chase Bank's valuation of the property," the court did not value the property at any amount and did not value Chase's claim secured by the property. It merely denied the debtor's request to value Chase's claim secured by the property at $1,600,000. Docket 67.

The ruling on the prior motion does not say that the court determines the value of the property to be $2,250,000 and that the value of Chase's claim is $2,250,000. By stating that the court "adopts JPMorgan Chase Bank's valuation of the property," the court did not value Chase's claim but merely rejected the debtor's $1,600,000 valuation of the property, without positively determining what is the value of the property.

The problem with applying claim preclusion then is that the court did not reach the merits of the prior motion, *i.e.*, did not determine the value of the property and the corresponding value of Chase's claim.

Stated differently, the motion was denied not because the court determined a different value for the property but because the debtor did not carry its burden of persuasion as to the asserted value of the property. Nothing more.

More, in its opposition to the prior valuation motion, Chase specifically stated that "Chase does not consent to the Court's resolution of the value of the Property based on the pleadings and reserves its right for an evidentiary hearing on the value of the Property if the parties are unable to resolve their dispute." Docket 51 at 1-2 n.2. The prayer for relief in Chase's opposition to the prior motion did not ask for determination of the value of the property. It asked only that the court deny the motion, meaning denying a valuation of $1,600,000, which is what the court did. Docket 51 at 5; Docket 67.

As Chase did not want the court to determine the value of the property on the pleadings of the prior valuation motion and the court did not determine the value of the property in connection with that motion, the court's ruling on that prior motion cannot be res judicata as to determining the value of the property in this motion. The court has not yet valued the property and Chase's claim as secured by the property.

In light of the above, the debtor is not precluded in this motion from seeking the court to value the property and Chase's claim at a value different than $1,600,000.

Turning to the merits of the motion, 11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ...

is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The debtor contends that the property has a value of $1,920,000 as of January 23, 2014, based on an appraisal. Dockets 87 & 89.

On the other hand, Chase has produced an appraisal, valuing the property at $2,250,000 as of December 12, 2013. Docket 94.

While both appraisals submitted in connection with this motion are supported by declarations, Chase's appraisal contains some unexplained inconsistencies. For instance, the debtor's appraisal states that the square footage of the gross living area is 5,353 square feet, and the debtor has produced a declaration stating that the house has been permitted only for 5,414 square feet of living space. Docket 101.

Chase's appraisal though says that the gross living area is 6,186 square feet, plus 769 square feet added for a guest house, for a total of 6,955 square feet. Docket 89 at 28; Docket 94 at 5. This is an additional 1,602 square feet missing from the debtor's appraisal. At the $323.50 price per square foot value assigned by Chase's appraisal ($2,250,000 / 6955 square feet), that is a $518,247 increase in value by Chase.

This increase in square footage has not been explained by Chase, even though just this discrepancy may explain the significantly different valuations. Chase makes no effort in its opposition to explain why its appraisal has added 1,602 square feet to the value of the property. The court cannot tell from Chase's appraisal whether its appraiser actually measured the size of the home. Chase makes no attempt to explain any of the differences between the two appraisals.

Chase had the opportunity to explain this square footage discrepancy in its opposition to the motion, given that the motion - as served on Chase - included the debtor's appraisal, listing only 5,353 square feet for the property.

Instead of explaining the differences between the two appraisals, Chase chose to ask for an evidentiary hearing.

But, there is no basis for holding an evidentiary hearing on the value of the property. The court will deny Chase's evidentiary hearing request because there are no disputed material facts. See Local Bankruptcy Rule 9014-1(f)(1)(B) (providing that an evidentiary hearing may be held only when there disputed material facts in the record).

The fact that the two appraisals have substantially different values for the property is not a disputed material fact, given that Chase's appraisal accounts for but does not explain 1,602 of square footage (or $518,247 in value) not accounted for in the debtor's appraisal. It is as if, by failing to explain this extra square footage in its opposition, Chase has attempted to manufacture a disputed material fact.

Also, the court is satisfied with the debtor's evidence, submitted with its reply, about what is the permitted square footage for the house. Docket 101.

The court has some additional issues with Chase's appraisal. It states many times that there is a shortage of supply for the homes in the area. But, in justifying a recent decrease in asking prices for listings, the appraisal also says that "ASKING PRICES HAVE RECENTLY DECREASED BUT THIS IS MORE A REFLECTION OF THE SHORTAGE OF SUPPLY CURRENTLY ON THE MARKET."

It makes no sense to the court that asking prices decrease because of supply shortage. Supply shortage tends to lead to increase in asking prices, especially when demand for the home is "sufficient". Docket 94 at 12. Also, if asking prices have indeed decreased, it makes no sense for the appraiser to ignore those decreased asking prices in valuing the property, regardless of the reason why they decreased.

After the debtor filed its reply, the record closed and the court has now sufficient explained and undisputed evidence on the value of the property - $1,920,000.

Finally, the court is also satisfied with the debtor's explanation about why it thought the value of the property was $1,600,000 in the prior valuation motion, given an appraisal for $1,600,000 dated April 2013. Docket 101.

The property is subject to:

- a first mortgage in favor of JPMorgan Chase Bank for approximately $2,231,587 ($2,250,700.10 per proof of claim),

- a second mortgage in favor of IndyMac Mortgage Services for approximately $250,000, and

- a third mortgage in favor of Jahan and Faran Honardoost for approximately $200,000.

The property is not the debtor's residence. The anti-modification provision of 11 U.S.C. § 1123(b)(5) then does not apply. Chase's first mortgage claim against the property is partially unsecured within the meaning of 11 U.S.C. § 506(a)(1) because the estate has no equity in the property. Chase's first mortgage claim will be stripped down to the value of the property, $1,920,000. Its claim in excess of $1,920,000 will be an unsecured claim. The motion will be granted only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

5.	11-42346-A-7	ERNEST BEZLEY	MOTION TO
	13-2291	PA-1	INTERVENE
	NIMS V. JENNINGS		2-14-14 [13]

Tentative Ruling: The motion will be granted.

Jacqueline Bezley, moves to intervene as a plaintiff under Fed. R. Civ. P. 24(a) & (b), as made applicable here via Fed. R. Bankr. P. 7024.

The plaintiff, Eric Nims, the chapter 7 trustee in the underlying bankruptcy case of Ernst Bezley, the husband of the movant, has filed a conditional non-opposition, stating that he does not oppose intervention "to the extent that she [the movant] is not seeking any remedy that is, in fact, property of the bankruptcy estate." Docket 20.

Fed. R. Civ. P. 24(a) provides: "On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

In the Ninth Circuit, a party may intervene as a matter of right under a four-part test: (1) the motion to intervene must be timely; (2) the party must assert an interest relating to the property or transaction which is the subject of the action; (3) the party must be so situated that without intervention the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the party's interest must be inadequately represented by other parties in the action. United States v. State of Washington, 86 F.3d 1499, 1503 (9th Cir. 1996); see also Cedar-Sinai Medical Center v. Shalala, 125 F.3d 765, 768 (9th Cir. 1997).

Fed. R. Civ. P. 24(b)(1) provides that "On a timely motion, the court may permit anyone to intervene who (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention requires 1) an independent ground for jurisdiction, 2) a timely motion, and 3) a common question of law and fact between the movant's claim or defense and the main action. Washington, 86 F.3d at 1506-07.

"In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

In determining whether a motion to intervene as of right or permissively is timely, the court must consider the stage of the proceeding at which the applicant seeks to intervene, prejudice to other parties, and the reason for and length of delay. Washington, 86 F.3d at 1503; see also Bouman v. Pitchess, 158 Fed. Appx. 937, 939 (9th Cir. 2006).

This adversary proceeding was filed on September 13, 2013. Discovery cut-off is May 15, 2014 and the continued status conference in the case is set for July 16, 2014. This means that there is still time for the movant to participate in discovery, assuming it is necessary. Docket 11. The court perceives no prejudice to the other parties in this proceeding, given that the movant had initiated her own separate adversary proceeding against the defendant here, Mr. Jennings, asserting for the same or similar claims as are asserted by the plaintiff here. See Adv. Proc. No. 13-2292, Docket 1. There has been no delay in the movant's intervention, since this court dismissed her adversary proceeding against Mr. Jennings on January 23, 2014. Accordingly, the court is persuaded that this motion is timely.

The movant is co-obligor, along with her husband and debtor Ernst Bezley, on

loans extended to her and Mr. Bezley by the defendant in this proceeding, Mr. Jennings. She also holds joint tenancy interest in the real properties securing the loans. And, those loans are the subject of this adversary proceeding. The plaintiff is seeking: reformation of the loans, voidance of some of the provisions in the loans, recovery of interest paid on account of the loans, and recovery of treble damages for the interest paid on account of the loans.

The adjudication of the subject claims in favor of or against the defendant may impair or impede the movant's interests in the loans and property securing the loans, especially if the defendant's proofs of claim are allowed as filed and/or the movant is found to have community property interest in unencumbered or underencumbered property that may be necessary to liquidate to pay the defendant's proofs of claim. See 11 U.S.C. § 541(a)(2) (providing that the bankruptcy estate is comprised of "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case").

Finally, the plaintiff in this proceeding represents only the interests of Mr. Bezley's bankruptcy estate and the creditors of that estate. He does not represent or adequately represent the movant's interests in property - community or separate - securing the loans and does not represent or adequately represent the movant's community property interests in unencumbered or underencumbered property that may be necessary to liquidate to pay the defendant's proofs of claim.

The court will permit the movant to intervene as a plaintiff under Rule 24(a)(2). The motion will be granted.

6. 11-42346-A-7 ERNEST BEZLEY — MOTION TO AMEND
13-2292 PA-1 — 2-6-14 [26]
BEZLEY V. JENNINGS

Tentative Ruling: The motion will be denied.

The plaintiff in this now-dismissed adversary proceeding, Jacqueline Bezley, asks the court to amend its civil minutes (Docket 21) and civil minute order (Docket 23) dismissing this proceeding, to add the following language to the civil minute order:

- the motion to dismiss "is ORDERED GRANTED, without prejudice;"

- "[t]he granting of the motion is without prejudice as to Plaintiff filing a motion to intervene in the Chapter 7 Trustee's Adversary Proceeding against Harold Jennings, Adv. Proc. No. 13-02291;" and

- "[t]he granting of the motion is without prejudice as to Plaintiff objecting to the claims of Mr. Jennings, should the Trustee not do so."

At present, the civil minute order dismissing this proceeding states that "The motion is ORDERED GRANTED for the reasons stated in the ruling appended to the minutes."

The movant is asking the court to amend its civil minutes "to incorporate the additional findings of fact and conclusions of law made on the record in open court during the hearing on January 21, 2014."

The motion will be denied for several reasons.

First, unless an order states that dismissal is without prejudice, dismissal is always without prejudice. See, e.g., Fed. R. Civ. P. 41(a)(2), as made applicable by Fed. R. Bankr. P. 7041. The civil minute order and the minutes on the hearing resulting in the order granting the motion to dismiss and dismissing this proceeding do not state anywhere that the proceeding is being dismissed with prejudice. Dockets 21 & 23.

Further, as the court dismissed the movant's claims in this proceeding at the least in part based on the lack of subject matter jurisdiction, the dismissal could not have been with prejudice. This court cannot rule that it has no subject matter jurisdiction over claims and then proceed to dismiss those claims with prejudice.

Second, the court will not enter an order effectively issuing an advisory opinion about what the movant can do, including objecting to Mr. Jennings' proofs of claim, "should the Trustee not do so."

More important, the trustee has already objected to Mr. Jennings' proofs of claim. The trustee's four causes of action against Mr. Jennings in Adv. Proc. 13-2291, filed on September 13, 2013, before the October 17, 2013 claims bar date, are objecting to Mr. Jennings' proofs of claim because:

- the trustee is seeking reformation of the loans upon which the proofs of claim are based,

- he is seeking the voidance of some of the provisions in the loans upon which the proofs of claim are based,

- he is seeking the recovery of interest paid on account of the loans upon which the proofs of claim are based, and

- he is seeking the recovery of treble damages for the interest paid on account of the loans upon which the proofs of claim are based.

Third, when a proceeding has been dismissed without prejudice, it is dismissed without prejudice as to all matters that could have been implicated if the proceeding was dismissed with prejudice. The court will not enumerate the movant's specific procedural rights that are not affected by the dismissal of this proceeding. The movant's procedural rights are well defined by the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure, which speak for themselves.

Fourth, even if the proceeding had been dismissed with prejudice, that would not have precluded the movant from filing a motion to intervene in the adversary proceeding instituted by the trustee. The granting of that motion would be an entirely different matter, however.

Fifth, the court is granting the movant's motion to intervene in the trustee's adversary proceeding against Mr. Jennings, meaning that the relief requested by the movant - seeking the minute order to say that dismissal is without prejudice to the movant filing a motion to intervene in the proceeding instituted by the trustee - is moot. This motion will be denied.

7. 14-20348-A-11 JOE/CAROL MOBLEY — MOTION TO EMPLOY
CAH-2 — 2-10-14 [19]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests authority to employ C. Anthony Hughes as bankruptcy counsel for the estate. The movant's compensation will be based on an hourly fee arrangement. Mr. Hughes will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at hearings; negotiating with creditors; assisting with the preparation and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the estate; and addressing post-confirmation issues.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. The movant is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

8. 10-21350-A-11 JOHN/SHEILA WALKER — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY (FEES $35,463, EXP. $1,577.59)
WW-8 — 2-13-14 [298]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned

parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Mark Wolf, attorney for the debtor in possession, has filed his first and final motion for approval of compensation. The requested compensation consists of $35,463 in fees and $1,577.59 in expenses, for a total of $37,040.59. This motion covers the period from February 4, 2010 through November 4, 2013. The court approved the movant's employment as the attorney for the debtors in possession on February 18, 2010. In performing its services, the movant charged hourly rates of $100, $110, $125, $150, $200, $280, $350.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) preparing schedules and statements not filed on the petition date, (2) communicating with the debtor about various issues, (3) attending and representing the debtor at the IDI and the meeting of creditors, (4) attending court hearings, (5) preparing and obtaining approval/confirmation of disclosure statement and plan, (6) responding to six stay relief motions, (7) responding to a motion to convert by the U.S. Trustee, and (8) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

9. 10-21350-A-11 JOHN/SHEILA WALKER — NOTICE OF INTENT TO CLOSE CHAPTER 11 CASE 2-20-14 [305]
WW-9

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The objection will be sustained.

The debtors are objecting to the notice of intent to close the case, asking the court to close the case only after the hearing on their attorney's compensation motion, set for March 17, 2014.

The court will not close the case until the hearing on the compensation motion has concluded and an order on that motion has been entered on the docket. The objection will be sustained.

10. 14-21555-A-11 ELK GROVE COMMUNICATIONS TOWER, INC. — MOTION TO CONVERT OR TO DISMISS CASE 2-20-14 [9]
UST-2

Tentative Ruling: The motion will be granted and the case will be dismissed.

The U.S. Trustee is asking the court to dismiss this case as the debtor corporation is not represented by a licensed attorney.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter

to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

Local District Rule 183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), provides that "A corporation or other entity may appear only by an attorney."

The debtor filed this case without the representation of counsel. The petition was signed by the debtor's president, Donald Tenn, who is not identified as an attorney. This is impermissible and is cause for purposes of 11 U.S.C. § 1112(b)(1).

The court also notes that although this case was filed on February 19, 2014, the statement of financial affairs and Schedules A, B, D, E, F, G and H have not been filed with the court yet. This is further cause for purposes of 11 U.S.C. § 1112(b)(1).

As the court does not have information about the debtor's assets and liabilities, it cannot determine whether conversion to chapter 7 is in the best interest of the estate. Accordingly, the case will be dismissed.

11. 12-33158-A-12 GREG HAWES — MOTION TO DISMISS CASE
JPJ-1 — 2-6-14 [151]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case.

The debtor opposes the motion, stating that he will be filing "a new plan prior to the date of this hearing to resolve the issues addressed in the Trustee's Motion."

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

This case was filed on July 17, 2012. The last plan in the case was filed on August 20, 2012, over 1.5 years ago. Docket 42. The only hearing on plan confirmation was held on October 1, 2012. Dockets 76 & 82. The court denied confirmation and the debtor has filed no other plan with the court.

The court also notes that the debtor's response to the instant motion is not supported by any evidence and the response does not explain why the debtor has not obtained confirmation of a plan during the 20-month duration of this case. This amounts to unreasonable delay that is prejudicial to creditors, which is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.

12. 11-44274-A-11 GEOFFREY/MARIVIE FABIE — MOTION FOR SUMMARY JUDGMENT
13-2069 LP-9 — 1-30-14 [17]
CARDILLO V. FABIE ET AL

Final Ruling: The hearing on this motion will be continued to May 27, 2014,

according to the minutes of the status conference hearing held on February 19, 2014. Docket 34.

13. 12-24878-A-12 SILVIA LEPE — MOTION TO DISMISS CASE 2-6-14 [92]
JPJ-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the U.S. Trustee, and any other party 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case. The debtor does not oppose to the motion.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

This case was filed on March 13, 2012 as a chapter 13 proceeding. The case was converted to chapter 12 on June 18, 2012. The debtor has never filed a chapter 12 plan. This amounts to unreasonable delay that is prejudicial to creditors, which is cause for dismissal. The motion will be granted and the case will be dismissed.

14. 13-20090-A-12 JERRY WATKINS — MOTION TO DISMISS CASE 2-5-14 [55]
JPJ-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor, the U.S. Trustee, and any other party 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the

debtor that is prejudicial to creditors."

This case was filed on January 3, 2013. The debtor filed a plan on January 15, 2013 and the only hearing on plan confirmation was held on April 1, 2013. The court denied confirmation and the debtor has filed no other plan with the court. The court also notes that the debtor has not filed a response to the instant motion. The foregoing is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.