**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**September 17, 2018 at 10:00 a.m.**

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1. 17-26601-A-7 JEROME PORTER — MOTION TO DISMISS ADVERSARY PROCEEDING
18-2116 AP-1 — 8-10-18 [10]
PORTER V. RALPH PARTNERS II, L.L.C. ET AL

**Tentative Ruling:** The motion will be granted and all claims against Wells Fargo Bank will be dismissed.

One of the defendants in this adversary proceeding, Wells Fargo Bank, seeks dismissal, arguing judicial estoppel, lack of standing, lack of subject matter jurisdiction, discretionary abstention, and failure to state a claim upon which relief can be granted.

The plaintiff and debtor in the underlying chapter 7 case filed the bankruptcy case on October 4, 2017. The case was dismissed on October 23, 2017 due to the plaintiff/debtor's failure to file bankruptcy schedules and statements. Case No. 17-26601, Docket 17. The plaintiff/debtor filed this adversary proceeding against Ralph Partners II, L.L.C., Law Offices of Sam Chandra, APC, Wells Fargo Bank, and All Parties Claiming to Have Interest Against Real Property 5086 Digerud Drive, Fairfield, California, on July 11, 2018. The causes of action asserted against the defendants include:

"*(1) false pretenses, false representation, fraud, intentional misrepresentation, and profession negligence § 523(a)(2);*

"*(2) breach of covenant of good faith and fair dealings, breach of duty of care, and fraud as fiduciary § 523(a)(4);*

"*(3) unethical/deceptive business practices, fraudulent transfer of title/deed of trust § 548;*

"*(4) intentional infliction of emotional distress § 523(a)(4);*

"*(5) willful and malicious injury § 523(a)(6);*

"*(6) unjust enrichment;*

"*(7) unlawful business practices in violation of business and professions code § 17200;*

"*(8) predatory lending/violations of truth in lending act;*

"*(9) violation of California Civil Code Section 2923.6 and 1572 et seq.;*

"*(10) defamation;*

"*(11) false light;*

"*(12) to void or cancel assignment of deed of trust; and*

"*(13) intentional misrepresentation in violation of title 15 USCS 78ff [sic], title 16 USCS 1692e, title 18 USCS § 1001 & 1002, FRPC 9B, and Title 42 USCS 1986.*"

These claims do not satisfy the case or controversy requirement of Article III of the United States Constitution. To establish standing under the case or controversy requirement, the movant (1) must have suffered some actual or threatened injury due to alleged illegal conduct, known as the "injury in fact" element; (2) the injury must be fairly traceable to the challenged action, known as the "causation element"; and (3) there must be a substantial likelihood that the relief requested will redress or prevent plaintiff's injury, known as the "redressability element." U.S.C.A. Const. Art. 3, § 1 et seq.; Allen v. Wright, 468 U.S. 737, 751 (1984); Dunmore v. United States, 358 F.3d 1107, 1111-12 (9th Cir. 2004) (citing Lujan, 504 U.S. at 560-61).

The claims under 11 U.S.C. §§ 523 and 548 do not meet the redressability element.

11 U.S.C. § 523(a)(2), (a)(4), and (a)(6) are exceptions to a discharge. Here, the debtor will not receive a discharge because the case was dismissed.

11 U.S.C. § 548 is a cause of action for the benefit of the bankruptcy estate, which can be asserted only by the bankruptcy trustee. Absent court approval, only the bankruptcy estate has the authority to prosecute causes of action for the benefit of the estate and the creditors. In re O'Reilly, Case No. C 13-3177 PJH, WL 460767, at * 8 (N.D. Cal. Feb. 3, 2014); J & J Sports Prods., Inc. v. Benitez, Case No. 1:12-CV-00735-LJO-SMS, WL 5347547, at * 4 (E.D. Cal. Sept. 23, 2013); Montgomery v. Wal-Mart Stores, Inc., Case No. 12CV3057 JLS (DHB), WL 5278649, at * 7 (S.D. Cal. Sept. 18, 2013); JMS Labs Ltd. (U.S.A.), LLC v. Silver Eagle Labs, Inc. (In re Lockwood), 414 B.R. 593, 602-03 (Bankr. N.D. Cal. 2008); State of California v. PG & E Corp. (In re Pac. Gas & Electric Co.), 281 B.R. 1, 13-15 (Bankr. N.D. Cal. 2002) (citations omitted). This includes all types of causes of action that would benefit the estate and the creditors. The debtor has not sought and the court has not granted permission to the plaintiff to prosecute a section 548 avoidance claim.

The underlying bankruptcy case has been dismissed and there will be no discharge entered and there is no bankruptcy estate to administer. The claims under section 523(a) and 548 make no sense. As there is no possibility of discharge or the existence of a bankruptcy estate any longer, the debtor has no standing to assert the section 523 and 548 claims. There is no injury of the debtor that prosecution of these claims can redress.

Further, the court has no subject matter jurisdiction as to any of the other claims asserted by the plaintiff.

A federal court has the obligation to review sua sponte whether it has subject matter jurisdiction under Article III's case-or-controversy requirement. Fed. R. Civ. P. 12(h)(3) (providing that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); Florida Wildlife Fed'n, Inc. v. South Florida Water Mgmt. Dist., 647 F.3d 1296, 1302 (11th Cir. 2011); see also Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc., 561 F.3d 1294, 1296

(11th Cir. 2009) (citing 28 U.S.C. § 1447(c)).

"Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000)(citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982)).

Bankruptcy jurisdiction extends to four types of title 11 matters: proceedings
- "under title 11,"
- "arising under title 11,"
- proceedings "arising in a case under title 11," and
- proceedings "related to a case under title 11."

See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." Contra Stern v. Marshal, 131 S. Ct. 2594, 2608 (2011) (creating another category of core claims as to which the bankruptcy court cannot enter final judgment, treated as "cases related to a case under chapter 11"); see also Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 134 S. Ct. 2165, 2172 (2014).

"*Stern made clear that some claims labeled by Congress as 'core' may not be adjudicated by a bankruptcy court in the manner designated by § 157(b). Stern did not, however, address how the bankruptcy court should proceed under those circumstances. We turn to that question now.*"

Bellingham Insurance at 2172.

28 U.S.C. § 157(b)(2) states that "*[c]ore proceedings include, but are not limited to– (A) matters concerning the administration of the estate . . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.*"

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). Given the subject motion, though, consent of the parties is highly unlikely in this case.

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202

F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

The claims, aside from the section 523 and 548 causes of action, are not core as termed by 28 U.S.C. § 157(b)(1). The claims are not under title 11. They also do not invoke substantive rights provided by title 11, nor could they by their nature arise only in the context a bankruptcy case. The claims are based on state law or nonbankruptcy federal law. They raise purely non-bankruptcy law issues, such as common law and statutory torts.

Moreover, this court dismissed the underlying chapter 7 case on October 23, 2017. Case No. 17-26601, Docket 17. There is then no bankruptcy estate any longer and the claims in this proceeding are not core. They could not affect the administration of the bankruptcy estate because there is no estate.

Further, In re Carraher does not apply here. Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992) (holding that bankruptcy courts are not automatically divested of subject matter jurisdiction over related to cases when the underlying bankruptcy case has been dismissed).

In Carraher, the court retained jurisdiction over fraud claims that were pending at the time the bankruptcy case was dismissed. Here, none of the claims asserted by the plaintiff were pending at the time the bankruptcy case was dismissed. The bankruptcy case was dismissed on October 23, 2017, whereas this adversary proceeding was filed approximately eight months later, on July 11, 2018. The court then cannot retain jurisdiction over the non-bankruptcy claims. Sea Hawk Seafoods, Inc. v. State of Alaska (In re Valdez Fisheries Dev. Ass'n, Inc.), 439 F.3d 545, 548-49 (9th Cir. 2006).

Finally, if the court could retain jurisdiction over the non-bankruptcy claim under Carraher, the court declines to do so, even after considering economy, convenience, fairness and comity under Carraher. These factors do not favor retaining jurisdiction over the non-bankruptcy law claims. This court is not equipped to adjudicate just any non-bankruptcy claim. And, it was never intended to adjudicate non-bankruptcy claims in the absence of a pending bankruptcy case. It would be grossly unfair to the court and the defendants, and also prejudicial to the defendants, to be forced to litigate here, when there is no longer a pending bankruptcy case and the plaintiff chose not to prosecute his chapter 7 bankruptcy case. The underlying chapter 7 case was dismissed because the plaintiff did not file all bankruptcy schedules and statements. Case No. 17-26601, Dockets 3 & 17. And, it was dismissed approximately 10 months ago.

Further, while the dismissal of the bankruptcy case may not have automatically stripped off this court of some subject matter jurisdiction over the subject claims, the only type of jurisdiction this court could have is supplemental jurisdiction under Carraher.

However, the concept of supplemental jurisdiction in bankruptcy is quite

limited.

"*But the bankruptcy court's jurisdiction after dismissal is not unlimited. The bankruptcy court retains subject matter jurisdiction to interpret orders entered prior to dismissal and to dispose of ancillary matters such as an application for an award of attorney's fees. Id. at 46 (citing In re Franklin, 802 F.2d 324, 326-27 (9th Cir.1986) and U.S.A. Motel Corp. v. Danning, 521 F.2d 117 (9th Cir.1975)). However, once a bankruptcy case has been dismissed, the bankruptcy court does not have jurisdiction to grant new relief independent of its prior rulings. Id. (citing In re Taylor, 884 F.2d 478, 481 (9th Cir.1989)).*

. . .

"*The circumstances here are distinguishable. The Court is not being asked to interpret its own order, or to approve an application for attorney's fees. In the Tentative Decision, the Court framed the key issue as whether there is any property of the estate to surcharge, once the case has been dismissed. Upon dismissal of a bankruptcy case, property of the estate is revested in the entity in which such property was vested immediately before the commencement of the case. § 349(b)(3). The relief requested by Debtor in the Surcharge Motions requires this Court to exercise jurisdiction over property in which both the estate and the Bank had an interest—specifically, the $100,000 collected in relation to the Castro litigation, and the collected accounts receivable. Upon dismissal, the Court was divested of jurisdiction over those funds. Property that is no longer property of the estate may not be surcharged. See In re Skuna River Lumber, LLC, 564 F.3d 353, 355 (5th Cir. 2009); In re Maine Pride Salmon, Inc., 180 B.R. 337, 342 (Bankr. D. Me. 1995).*"

In re Valley Process Systems, Inc., Case No. 13-51936-ASW, 2014 WL 3635367 at *1-2 (Bankr. N.D. Cal. July 23, 2014).

As in Valley Process, when this court dismissed the underlying bankruptcy case, all assets of that bankruptcy estate were revested back with the plaintiff. 11 U.S.C. § 349(b)(3) prescribes that "*Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—*

"*. . .*

"*(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.*"

The assets that revested back with the plaintiff included the subject claims against the defendants in this adversary proceeding. As a result, the dismissal of the bankruptcy case divested this court of jurisdiction to adjudicate the claims.

Such claims are based solely on non-bankruptcy law and seek damages for violations of such law. Docket 1. In other words, adjudicating the claims in this adversary proceeding is not merely ancillary to the administration of the chapter 7 bankruptcy case. Adjudicating the claims would require the granting of new relief, separate and independent from any rulings or orders in the bankruptcy case, prior to dismissal. The granting of relief under the claims would not be ancillary to the plaintiff's now dismissed bankruptcy case. It would not require the interpretation, implementation or revisiting of orders entered by the court in the bankruptcy case.

The orders entered by the court in the underlying bankruptcy case before its dismissal include: an order granting the plaintiff's request for payment of the filing fee in installments (Case No. 17-26601, Docket 8), an order dismissing the case (Case No. 17-26601, Docket 17), and an order closing the case (Case No. 17-26601, Docket 19).

None of the above orders have relevance to the adjudication of the claims in this adversary proceeding. The claims here call for the award of new relief, independent from what transpired in the bankruptcy case prior to dismissal. As such, this court does not have the type of supplemental jurisdiction contemplated by Carraher.

All remaining claims (outside the section 523 and 548 claims) will be dismissed for lack of subject matter jurisdiction. The court finds it unnecessary to address other grounds for dismissal. The motion will be granted and the claims will be dismissed as to the movant.

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| 2. | 16-24304-A-7<br>17-2007<br>MILES V. JOHNSON | CHRISTOPHER JOHNSON<br>SHB-2 | MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS (CHRISTOPHER L. JOHNSON)<br>5-8-18 [34] |

**Tentative Ruling**: Appearance by judgment debtor Christopher Johnson is mandatory.

The judgment debtor Christopher Johnson shall appear prior to the start of the 10:00 a.m. calendar and be sworn in for examination by the courtroom deputy.

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| 3. | 17-25004-A-11<br>MRL-11 | SARINA BRYSON | MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY<br>8-27-18 [124] |

**Tentative Ruling**: Because less than 28 days' notice of the hearing was given by the debtor's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 offer 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Liviakis Law Firm, P.C., counsel for the debtor in possession, has filed a motion for final approval of a compensation previously approved on an interim basis. See Docket 43. The requested compensation consists of $11,400 in fees and $0.00 in expenses. The services cover the period from July 31, 2017 through plan confirmation. The court approved the movant's employment as the chapter 11 debtor's attorney on September 12, 2017. The requested compensation is based on a flat fee arrangement, providing a total compensation to the movant in the amount of $11,400.

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 will include, without limitation:

(1) analyzing estate asset issues, (2) preparing for and attending the IDI and meeting of creditors, (3) communicating with the United States Trustee, (4) preparing and reviewing pleadings and documents, (5) attending court hearings, (6) preparing, filing, and prosecuting various chapter 11 administrative motions, (7) responding to stay relief motions, (8) preparing a chapter 11 plan and disclosure statement, (9) communicating with various parties about plan confirmation, (10) reviewing and analyzing proofs of claim, (11) communicating with the debtor about various issues, and (12) preparing and filing employment and compensation motions.

The court cannot alter the movant's terms of compensation after it approves them unless it concludes them "to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms." In re Reimers, 972 F.2d 1127, 1128 (9th Cir. 1992) (quoting In re Confections by Sandra, Inc., 83 B.R. 729, 731 (B.A.P. 9th Cir. 1987)).

The court sees no improvident circumstances not capable of being anticipated at the time it approved the movant's terms compensation. The requested compensation will be approved on final basis. The motion will be granted.

4. 17-25004-A-11 SARINA BRYSON — MOTION FOR FINAL DECREE ETC
MRL-12 — 8-27-18 [121]

**Tentative Ruling**: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 offer 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be conditionally granted.

The debtor ask the court to enter final decree and close the case, contending that the plan was confirmed, that payments under the confirmed plan are being made, and that there are no pending motions or adversary proceedings.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "*[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.*"

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993)

(citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "*(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.*"

This court confirmed the debtor's chapter 11 plan on July 30, 2018. Docket 114. The confirmation order is final. Property has revested in the debtor. The plan does not provide for revestment. Docket 114, Ex. A; see also 11 U.S.C. § 1141(b)(providing that "[e]xcept as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor." The debtor has commenced payments to creditors. The debtor is current on plan payments and there are no unresolved proceedings pending before this court.

Subject to the debtor confirming that she is current with filing all required reports with the court and paying U.S. Trustee quarterly fees, substantial consummation has been achieved. Upon such confirmation, the court will enter a final decree and close the case.

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| 5. | 17-26125-A-11 | FIRST CAPITAL RETAIL, L.L.C. | STATUS CONFERENCE 9-14-17 [1] |

**Final Ruling**: No appearances. Given the conversion of the case to one under chapter 7, the conference is concluded.

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| 6. | 15-29136-A-12 DB-1 | P&M SAMRA LAND INVESTMENTS L.L.C. | MOTION FOR RELIEF FROM AUTOMATIC STAY |
| | RECLAMATION DISTRICT 101 VS. | | 7-30-18 [601] |

**Tentative Ruling**: The motion will be granted in part and dismissed as moot in part.

The movant, Reclamation District 1001, seeks relief from the automatic stay as to a real property, 4604 Garden Highway, Nicolaus, California.

The motion will be dismissed as moot with respect to the estate as there is no longer a bankruptcy estate in this case. The debtor's chapter 12 plan was confirmed on March 29, 2017. The confirmed plan revested all property of the estate back into the debtor, meaning that there is no longer a bankruptcy estate. Docket 453 at 9. As such, the motion will be dismissed as moot as to the estate.

As to the debtor, the analysis is different. According to the movant, the property has a value of $3,200,000 and it is encumbered by claims totaling approximately $2,277,383. This leaves approximately $922,616 of equity in the property. The movant's statutory lien claim is in first priority position and secures a claim of approximately $22,383.

The debtor's plan does not provide for the movant's claim. The debtor has not listed the movant's claim in the schedules. See Dockets 14 & 16. No proof of claim has been filed. The movant's claim is secured, nevertheless, and the movant is entitled to look to its collateral to receive payment.

The debtor's failure to provide for the movant's claim in the plan, while not

paying the claim outside the plan, is cause for the lifting of the stay as to the debtor.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law rights to foreclose on its collateral. No other relief is awarded.

The court awards no attorney's fees and costs from the filing and prosecution of this motion because the movant has not requested such compensation and has not established a legal basis for recovering such compensation.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

7. 18-24944-A-11 JOANNE STRICKLAND — STATUS CONFERENCE 8-6-18 [1]

**Tentative Ruling:** None.

8. 18-22245-A-11 PLUSH GROUP CORPORATION — MOTION TO DISMISS OR CONVERT CASE 8-9-18 [71]
UST-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 creditors, 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 converted to chapter 7.

The United States Trustee moves for dismissal or conversion to chapter 7, asserting failure to file documents pertaining to the small business election, failure to pay quarterly fees to the United States Trustee, and no likelihood of rehabilitation.

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.*"

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter; [and] (K) failure to pay any fees or charges required under chapter 123 of title 28." 11 U.S.C. § 1112(b)(4)(A), (F), (K).

11 U.S.C. § 1116(1) provides that:

"*In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—*

"*(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—*

"*(A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or*

"*(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed.*"

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

This case was filed on April 15, 2018. The debtor designated itself on the petition as a small business debtor. Dockets 1 & 27. Yet, the debtor has not filed documents required by 11 U.S.C. § 1116(1), including a balance sheet, statement of operations, and a cash-flow statement.

The debtor also has not paid quarterly fees to the U.S. Trustee. As of the filing of this motion, the outstanding amount of the fees is $1,625.

Additionally, the court has granted the creditor owning the debtor's commercial premises relief from the automatic stay permitting it to recover possession of the property. Dockets 68 & 70. This means that the debtor no longer has, or soon will not have, a premises from which to operate its bar business. Given this, the court sees no likelihood of rehabilitation.

The foregoing is cause for dismissal or conversion under section 1112(b).

The case will be converted to chapter 7. While the debtor has no premises from which to operate its business, the debtor has personal property assets, including: $34,000 in inventory; sound, lighting, furniture, and glassware with a value of $120,000; and a liquor license with a value of $40,000. The debtor has listed no encumbrances for any of these assets. As such, these assets could be administered for the benefit of the creditors and the estate, in a chapter 7 proceeding. The case will be converted to chapter 7 for these assets to be liquidated. The motion will be granted.