

APR 11 2013

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	CC-12-1398-KiPaTa
6	MARSHALL SAMUEL SANDERS,)	Bk. No.	8:11-24594-ES
7	Debtor.)		
8	_____)		
9	MARSHALL SAMUEL SANDERS,)		
10	Appellant,)		
11	v.)	M E M O R A N D U M¹	
12	UNITED STATES TRUSTEE,)		
13	Appellee.)		
	_____)		

Submitted Without Oral Argument
on March 22, 2013²

Filed - April 11, 2013

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Appearances: Appellant Marshall Samuel Sanders pro se on brief;
Nancy S. Goldenberg, Esq. and Robert J. Schneider,
Jr., Esq. on brief for appellee Peter C. Anderson,
United States Trustee.

Before: KIRSCHER, PAPPAS, and TAYLOR, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

² On January 31, 2013, the Panel unanimously determined that this appeal was suitable for submission on the briefs and record without oral argument pursuant to Fed. R. Bankr. P. 8012.

1 Appellant, chapter 11³ debtor Marshall Samuel Sanders
2 ("Sanders"), appeals an order from the bankruptcy court which:
3 (1) dismissed his bankruptcy case; (2) entered judgment in favor
4 of appellee, United States Trustee Peter C. Anderson ("UST"), for
5 unpaid quarterly fees in the amount of \$2,277.86; and
6 (3) dismissed all pending adversary proceedings. We AFFIRM the
7 dismissal of the chapter 11 case and the adversary proceedings.
8 We also AFFIRM the bankruptcy court's decision to award the UST
9 quarterly fees, but we modify the amount awarded to \$977.06.⁴

10 We begin by noting that Sanders's opening brief fails to set
11 forth the facts of this appeal. His brief is also rife with other
12 deficiencies. Although it contains a "Table of Contents" and a
13 "Table of Authorities," these take up fifteen of the brief's
14 seventeen pages, and nothing stated within those pages corresponds
15 to the arguments presented, such as they are. Sanders's brief
16 also fails to provide a statement of the basis of appellate
17 jurisdiction, a statement of the issues presented and the
18 applicable standard of review, a proper statement of the case, a
19 summary of the argument, and any citations to the record or any
20 relevant authority, with the exception of string citations to some

21

22

23 ³ Unless specified otherwise, all chapter, code and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

25

26 ⁴ The UST admits the judgment should have been \$977.06 and
27 not \$2,277.86. Given the record and the statement of missed
quarterly payments and the accrual of interest determined by
statute, we may correct what was essentially a "clerical error"
and modify the award without remand. See United States v. Boyd,
208 F.3d 638, 649 (7th Cir. 2000), vacated on other grounds,
28 531 U.S. 1135 (2001)(correcting a clerical error without remand).

1 cases to support his argument about the dismissal of the adversary
2 proceedings. See Rule 8010(a)(1)(A)-(F).

3 Pro se litigants are not excused from complying with the
4 rules of appellate procedure. Clinton v. Deutsche Bank Nat'l
5 Trust Co. (In re Clinton), 449 B.R. 79, 83 (9th Cir. BAP 2011)
6 (citing King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987))("Pro se
7 litigants must follow the same rules of procedure that govern
8 other litigants."); Warrick v. Birdsell (In re Warrick), 278 B.R.
9 182, 187 (9th Cir. BAP 2002)). As such, we have the authority to
10 strike Sanders's brief and dismiss his appeal for failing to
11 comply with the rules of appellate briefing. See N/S Corp. v.
12 Liberty Mut. Ins. Co., 127 F.3d 1145, 1146 (9th Cir. 1997)
13 (striking appellant's brief, dismissing appeal, and stating: "In
14 order to give fair consideration to those who call upon us for
15 justice, we must insist that parties not clog the system by
16 presenting us with a slubby mass of words rather than a true
17 brief."); Cnty. Commerce Bank v. O'Brien (In re O'Brien), 312 F.3d
18 1135, 1136 (9th Cir. 2002).

19 Fortunately for Sanders, the UST has provided in his response
20 brief a proper accounting of the facts and (nearly) complete
21 excerpt of the record, including the required transcript. We are
22 further persuaded to not dismiss because the UST has conceded the
23 amount awarded for quarterly fees was in error and must be
24 corrected. Accordingly, we exercise our discretion to review the
25 merits of this appeal, keeping in mind that we can affirm on any
26 basis supported by the record. Shanks v. Dressel, 540 F.3d 1082,
27 1086 (9th Cir. 2008).

28 ////

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 A. Events leading to the UST's motion to dismiss

3 Sanders filed an individual chapter 11 bankruptcy case pro se
4 on October 20, 2011. In his schedules filed on October 26, 2011,
5 Sanders disclosed an interest in two parcels of real property ---
6 his residence in Santa Ana, California valued at \$750,000 and
7 secured by a total debt in the disputed amount of \$1,825,000
8 (including a first lien held by Bank of America), and a rental
9 property in Tustin, California valued at \$300,000 and secured by a
10 total debt of \$961,500, of which \$605,000 was disputed. Sanders
11 also listed \$750,000 in disputed priority tax debt and a total of
12 \$1,235,000 in disputed general unsecured claims, which consists
13 primarily of student loans.

14 On October 27, 2011, the bankruptcy court entered an order
15 directing Sanders to attend a status conference on January 5,
16 2012, and to file a status report at least fourteen days
17 beforehand (i.e., by December 23, 2011) that addressed, among
18 other things, the reasons for filing a chapter 11, whether he was
19 in compliance with all duties imposed on chapter 11 debtors under
20 §§ 521, 1106 and 1107, and when a plan and disclosure statement
21 would be filed ("First Status Order"). The First Status Order
22 specifically warned that "failure to timely comply with any
23 provisions of this order may be deemed consent to the conversion
24 or dismissal of this case"

25 In response to the First Status Order, the UST filed a
26 statement on December 27, 2011, informing the court that Sanders
27 had not timely filed a status report or the monthly operating
28 reports ("MORs") for October and November 2011.

1 Sanders belatedly filed the missing MORs and status report on
2 January 5, 2012, the day of the hearing. After the hearing, the
3 bankruptcy court entered an order on January 10, 2012, directing
4 Sanders to file a plan and disclosure statement by March 30, 2012,
5 and to file and serve an updated status report by April 12, 2012,
6 for the continued status conference on April 19, 2012 ("Second
7 Status Order"). The Second Status Order warned that "failure of
8 Debtor to file a plan and disclosure statement by such date may
9 result in the dismissal or conversion of this case upon submission
10 of a declaration by the U.S. Trustee indicating Debtor's non-
11 compliance with this provision."

12 Just prior to the January 5 status conference, Sanders filed
13 a complaint against Bank of America and Chex Systems, Inc.
14 ("Chex"), a credit reporting agency, asserting twenty-one claims
15 regarding an alleged false credit report Sanders claimed caused
16 him damages ("Chex Adversary Proceeding"). Although the
17 complaint's cover sheet asserted twenty-one claims, the body of
18 the complaint consisted of one page with nine sentences.

19 On January 30, 2012, LBS Financial Credit Union ("LBS") filed
20 a nondischargeability complaint against Sanders seeking to except
21 its debt from discharge under § 523(a)(6) for Sanders's alleged
22 concealment and conversion of a vehicle in which LBS held a
23 security interest ("Nondischargeability Adversary Proceeding").

24 In response to the Second Status Order, Sanders filed the
25 court-ordered form plan for individual debtors on March 30, 2012;
26 however, he failed to file the ordered disclosure statement. The
27 form plan was blank, other than a statement near the end that "All
28 legitimate creditors will be paid in full," with no explanation

1 regarding who these creditors were or how they were to be paid.
2 On April 12, 2012, Sanders filed another status report indicating
3 that he had already filed a complaint against Bank of America and
4 Chex, and that he had filed a reorganization plan. Sanders stated
5 that he intended to file various lien stripping motions and to
6 possibly seek a hardship discharge for his student loans. He also
7 contemplated filing an adversary complaint against certain parties
8 for an apparent botched repossession of his vehicle because DNA,
9 fingerprint, photographic, video and audio surveillance camera
10 evidence revealed that these parties were liable for damages.

11 Prior to the continued April 19 status conference, the
12 bankruptcy court issued a tentative ruling expressing "serious
13 concerns about this debtor's ability to administer this bankruptcy
14 estate." The court noted the following issues with Sanders's
15 latest status report: (1) he had not filed the ordered disclosure
16 statement; (2) the plan filed was blank; it designated no classes
17 of creditors and stated only that legitimate claims would be paid,
18 notwithstanding that several creditors had filed proofs of claim;
19 (3) the plan was unconfirmable on its face; (4) Sanders's debt in
20 excess of \$4 million and negative income disclosed in his
21 Schedule J raised a question as to the feasibility of funding a
22 plan; and (5) Sanders had not discussed any cash collateral issues
23 with respect to his rental property.

24 At the April 19 status conference, the bankruptcy court
25 elaborated on its concerns about Sanders's ability to reorganize
26 and the lack of progress made in his case. The court began by
27 informing Sanders, in painstaking detail, about the deficiencies
28 with his bankruptcy case. Sanders then asserted various reasons

1 as to why he had no creditors. The court pointed out, among other
2 things, that despite Sanders's assertion, numerous proofs of claim
3 had been filed, which were presumed valid until an objection had
4 been filed and decided. The court then asked Sanders to explain
5 why he was in a chapter 11 case attempting to reorganize if he had
6 no creditors. Sanders had no real response. The UST stated that
7 its office would proceed with a motion to dismiss or convert the
8 case if Sanders failed to make progress toward a plan of
9 reorganization.

10 Observing that the case had been sitting idle since its
11 filing in October 2011, the bankruptcy court ordered a new
12 deadline of May 18, 2012, for Sanders to file a disclosure
13 statement and amended plan, scheduled another status conference
14 for June 21, 2012, and directed Sanders to file an updated status
15 report by June 14, 2012. The court warned Sanders that failing to
16 file a disclosure statement and amended plan by May 18 would be
17 grounds for dismissal or conversion of the case, but the UST would
18 have to file the appropriate motion.

19 Sanders filed an amended plan on May 18, 2012, but failed to
20 file the ordered disclosure statement until May 21, 2012. As with
21 the first plan, the amended plan was blank. The disclosure
22 statement was essentially blank as well, failing to contain any
23 description of creditors or how they would be treated. Next to
24 the sections "Sources of Payments under the Plan," "Liquidation
25 Analysis" and "Feasibility," Sanders made "n/a" notations. As for
26 funding the plan, Sanders stated:

27 Because Debtor has no Creditors, no funds whatsoever are
28 set aside for payment of any alleged Proofs of Claim.
Instead Debtor has filed or will file an Adversary

1 Proceeding against each individual alleged Creditor that
2 has filed a Proof of Claim.

3 **B. The UST's motion to dismiss**

4 On June 14, 2012, the UST moved to dismiss Sanders's case for
5 "cause" under § 1112(b) and to grant judgment in favor of the UST
6 for unpaid quarterly fees ("Dismissal Motion"). Specifically, the
7 UST contended he was entitled to dismissal because:

- 8 • Sanders lacked sufficient cash or liquid assets with which to
9 pay scheduled priority tax debt of \$750,000, which had to be
10 paid in full within sixty months of the petition date
11 pursuant to § 1129(a)(9)(C);
- 12 • Sanders had not filed a meaningful plan and disclosure
13 statement containing proposed terms for creditors,
14 notwithstanding a court-imposed deadline;
- 15 • Sanders had not filed MORs for March and April 2012;
- 16 • Sanders lacked ability to fund a plan, as the MORs he had
17 filed through February 2012 showed a negative cash balance,
18 and his schedules reported a negative monthly cash flow;
- 19 • Sanders had not made any progress toward reorganization
20 despite being under chapter 11 protection for almost eight
21 months; and
- 22 • Sanders had failed to pay quarterly fees as required by
23 28 U.S.C. § 1930(a)(6).

24 The Dismissal Motion was set for hearing on August 7, 2012. The
25 UST's notice filed with the Dismissal Motion stated that, as per
26 Local Rules 9013-1(f) and (h), Sanders's failure to file a written
27 response to the motion within fourteen days of the hearing date
28 could result in a waiver of his right to oppose the motion and
allow the court to grant the requested relief.

Meanwhile, a hearing on a motion to dismiss filed in the Chex
Adversary Proceeding was held on July 5, 2012. In its tentative
ruling prior to the hearing, the bankruptcy court stated:

Grant motion to dismiss complaint as to both defendants

1 based upon the argument and legal analysis set forth in
2 the Motion, which this court incorporates by reference
3 herein. As complaint states no viable claim against
4 either defendant, dismissal is with prejudice.

4 (See Tentative Ruling, July 5, 2012). At the Chex dismissal
5 hearing, the bankruptcy court orally granted the motion to dismiss
6 Sanders's complaint with prejudice.⁵

7 The hearing on the Dismissal Motion proceeded on August 7,
8 2012. Despite having many weeks to file a written opposition,
9 Sanders did not timely file one, but instead appeared at the
10 hearing and read into the record his single-sentence response,
11 which he filed after the hearing:

12 I, Debtor, hereby oppose the motion to dismiss for
13 both procedural and substantive reasons, that in the
14 interest of time and expediency and because of the
15 emergency nature of behind-the-scenes foreclosure of
16 Debtor's property, Debtor is unable to elaborate on at
17 this time but will do, shortly.

16 Hr'g Tr. (Aug. 7, 2012) 1:18-2:1. Sanders said he was not trying
17 to escape his debts, but rather he was "simply trying to bring
18 forward evidence or adversary proceedings to force any alleged
19 creditor to show proof or promissory note or some evidence that I
20 owe them." Id. at 3:20-23. The court responded by noting that
21 Sanders's chapter 11 case had been languishing for ten months, and
22 the only plan he filed did not provide for anything; that alone
23 was grounds for dismissal. Sanders had also failed to show how he
24 could fund a plan of reorganization or to address why he had not
25 filed the required MORs. The court observed that the only thing

26 ⁵ As explained more thoroughly below, no written order
27 dismissing the Chex Adversary Proceeding was entered until
28 August 21, 2012, the day the bankruptcy court entered the order on
appeal.

1 going on in the case was an adversary proceeding Sanders had just
2 filed that morning.⁶

3 After hearing argument from the parties, the bankruptcy court
4 orally granted the Dismissal Motion, finding that Sanders had made
5 no progress after ten months in chapter 11, had not filed a viable
6 plan, had problems with his MORs, and had not addressed the issues
7 set forth by the UST. Accordingly, the bankruptcy case was
8 dismissed. The bankruptcy court further ruled sua sponte that the
9 pending adversary proceedings were also dismissed, but informed
10 Sanders that dismissal did not eliminate whatever claims he had
11 against these entities or prevent him from seeking relief against
12 them in state court or, if applicable, federal court. The
13 bankruptcy court also granted judgment in favor of the UST for any
14 unpaid quarterly fees.

15 Sanders filed a premature notice of appeal on August 7, 2012,
16 which was deemed timely once the bankruptcy court entered its
17 order on August 21, 2012 ("Dismissal Order"). Rule 8002(a). The
18 Dismissal Order dismissed Sanders's chapter 11 case for cause
19 under § 1112(b), granted a judgment in favor of the UST for
20 \$2,277.86 for quarterly fees due and owing, and dismissed "all
21 pending adversary proceedings."

22 II. JURISDICTION

23 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
24 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

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26
27 ⁶ This adversary was brought against Countrywide Bank, N.A.
28 and was related to a disputed secured claim against Sanders's
residence ("Countrywide Adversary Proceeding"). It asserted
various state law and TILA claims. See Adv. No. 12-1418, dkt. 1.

1 V. DISCUSSION

2 **A. The bankruptcy court did not abuse its discretion when it**
3 **dismissed Sanders's chapter 11 case.**

4 Under § 1112(b), "the court shall convert a case under this
5 chapter to a case under chapter 7 or dismiss a case under this
6 chapter, whichever is in the best interests of creditors and the
7 estate, for cause" Section 1112(b)(1). Hence, if cause
8 is present, the court must grant relief and determine whether
9 dismissal, conversion, or appointment of a trustee or examiner is
10 in the best interest of creditors and the estate. As the moving
11 party to dismiss, the UST had to establish cause.

12 A non-exclusive list of what constitutes "cause" is found in
13 § 1112(b)(4):

- 14 • substantial or continuing loss to or diminution of the estate
15 with no reasonable likelihood of reorganization;
- 16 • failure to comply with a court order;
- 17 • unexcused failure to satisfy timely any filing or reporting
18 requirement;
- 19 • failure to timely provide information reasonably requested by
20 the United States Trustee;
- 21 • failure to file a disclosure statement, or to file or confirm
22 a plan, within the time fixed by the court; and
- 23 • failure to pay any fees or charges [which includes quarterly
24 fees required under 28 U.S.C. § 1930(a)(6)].

25 Section 1112(b)(4)(A), (E), (F), (H), (J) and (K). The bankruptcy
26 court has broad discretion in determining what constitutes "cause"
27 adequate for dismissal under § 1112(b). See Pioneer Liquidating
28 Corp. v. U.S. Trustee (In re Consol. Pioneer Mortg. Entities),
248 B.R. 368, 375 (9th Cir. BAP 2000). Where reorganization or
rehabilitation is unrealistic or futile, a chapter 11 case may be

1 dismissed or converted even at its outset. Johnston v. Jem Dev.
2 Co. v. Johnston (In re Johnston), 149 B.R. 158, 162 (9th Cir. BAP
3 1992).

4 Sanders contends that his chapter 11 case should not have
5 been dismissed because he "faithfully and diligently" prosecuted
6 it, and the UST's Dismissal Motion was premature based on his
7 failure to pay quarterly fees. We disagree. The record clearly
8 supports the bankruptcy court's decision to dismiss this case as
9 ample cause existed for doing so, besides the nonpayment of fees.

10 First, the MORs Sanders did file up through February 2012
11 revealed a negative cash balance, and that he lacked any other
12 non-cash assets with which to fund a plan. His schedules
13 reflected that both his residence and rental home - the only real
14 assets in the case - were substantially over-encumbered with debt.
15 Sanders's chapter 11 case was pending for ten months without any
16 reasonable likelihood of reorganization. Despite being ordered
17 twice to comply with court orders to file a substantive disclosure
18 statement and plan compliant with §§ 1125 and 1129, he did nothing
19 more than file the required form disclosure statements and plans
20 in blank. He failed to even file a disclosure statement with his
21 first plan, and he subsequently filed the second one three days
22 past the imposed deadline. Sanders refused to provide for any
23 payments to creditors, even though their proofs of claim were
24 deemed valid due to his failure to lodge formal objections to any
25 of the fourteen claims. See § 502(a). He also failed to seek a
26 hardship discharge with respect to his alleged student loan debt
27 of over \$1 million. Sanders's conduct demonstrates that he had no
28 intention to put forth a confirmable plan of reorganization.

1 Therefore, cause was established under § 1112(b)(4)(A), (E) and
2 (J).

3 In addition, Sanders had unexcused failures to satisfy timely
4 the monthly reporting requirements established in §§ 1107(a),
5 1106(a)(1) and 704(a)(7) and (8), as he filed MORs late through
6 February 2012, and he failed to file any MORs for the months of
7 March, April, May or June 2012. These failures established
8 further cause under § 1112(b)(4)(F) & (H). Finally, although
9 Sanders eventually paid the UST quarterly fees for the fourth
10 quarter of 2011, he failed to pay any fees for the first, second
11 and third quarters of 2012. This failure also established cause
12 under § 1112(b)(4)(K).

13 Once "cause" was established, the bankruptcy court had to
14 dismiss or convert Sanders's case, as the appointment of a trustee
15 or examiner was pointless because he had no assets to administer
16 and his estate was administratively insolvent. The only exception
17 to conversion or dismissal would have been if the bankruptcy court
18 specifically identified "unusual circumstances . . . that
19 establish that such relief is not in the best interest of
20 creditors and the estate." § 1112(b)(1). The bankruptcy court
21 did not identify any such circumstances, and Sanders did not (and
22 could not) meet his burden to show that any existed under
23 § 1112(b)(2), one of which was a reasonable likelihood that a plan
24 would be confirmed in a reasonable time. See In re Orbit
25 Petroleum, Inc., 395 B.R. 145, 148 (Bankr. D. N.M. 2008)(upon
26 finding cause burden shifts to opposing party to demonstrate that
27 § 1112(b)(2) precludes relief under § 1112(b)(1)).

28 Admittedly, the record does not evidence that the bankruptcy

1 court engaged in the "balancing test" used to determine whether
2 conversion or dismissal was in the best interests of creditors and
3 the estate. See § 1112(b)(1). However, we can affirm on any
4 basis supported by the record, and the record establishes that
5 dismissal was appropriate. Shanks, 540 F.3d at 1086. As stated
6 above, Sanders had no assets to administer and his case was
7 administratively insolvent. The UST moved only to dismiss the
8 case, no oppositions were filed by any creditors, and Sanders
9 never asked the court to consider conversion to chapter 7.
10 Sanders also failed to file a timely written opposition to the
11 Dismissal Motion, which provided an independent procedural basis
12 for dismissal. See Local Bankruptcy Rules 9013-1(f) and (h).
13 Sanders does not assign error to the bankruptcy court for not
14 converting his case to chapter 7, which he had already filed
15 before this case.

16 In ten months, Sanders's creditors suffered losses while he
17 did virtually nothing other than receive the protections of the
18 bankruptcy stay while he prosecuted state law claims in what
19 essentially were two-party lawsuits. Therefore, dismissal was
20 appropriate and in the best interest of creditors. Accordingly,
21 the bankruptcy court did not abuse its discretion in dismissing
22 Sanders's bankruptcy case.

23 **B. The bankruptcy court did not abuse its discretion in**
24 **dismissing the pending adversary proceedings.**

25 The UST contends that the only pending adversary at the time
26 the Dismissal Order was entered was the Countrywide Adversary
27 Proceeding. This is not entirely correct. At the time of the
28 hearing on the Dismissal Motion on August 7, 2012, the Chex

1 Adversary Proceeding had been orally dismissed with prejudice on
2 July 5, 2012, for Sanders's failure to comply with the pleading
3 requirements of Civil Rule 8, incorporated by Rule 7008. However,
4 that proceeding was not "officially" dismissed by written order
5 until August 21, 2012, in the Dismissal Order. Therefore, it
6 appears to be subject to this appeal. Nonetheless, Sanders has
7 not asserted any argument for how the bankruptcy court erred in
8 dismissing the Chex Adversary Proceeding for the reasons that it
9 did. As a result, he has waived any argument on this issue, and
10 we do not consider it. City of Emeryville v. Robinson, 621 F.3d
11 1251, 1261 (9th Cir. 2010)(appellate court in this circuit "will
12 not review issues which are not argued specifically and distinctly
13 in a party's opening brief."). In any event, we fail to see how
14 the bankruptcy court erred in dismissing a complaint under Civil
15 Rule 8 that asserted twenty-one causes of action but consisted of
16 only nine sentences. See Ashcroft v. Iqbal, 556 U.S. 662, 677-78
17 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007).
18 As a result, dismissal of this proceeding was appropriate.

19 Further, the Nondischargeability Adversary Proceeding was
20 also pending at the time of the dismissal hearing and at the time
21 the Dismissal Order was entered. For obvious reasons, Sanders
22 does not dispute the dismissal of that action. In any event, an
23 action seeking an exception to Sanders's discharge under
24 § 523(a)(6) was rendered moot once the bankruptcy case was
25 dismissed because Sanders would not be receiving a discharge.
26 Thus, dismissal of it was appropriate.

27 Therefore, that leaves us with only the dismissal of the
28

1 Countrywide Adversary Proceeding to review.⁷

2 Bankruptcy courts have jurisdiction over all civil
3 proceedings arising under title 11, or arising in or related to
4 cases under Title 11. 28 U.S.C. § 1334(b). Here, the suit at
5 issue involved claims primarily based on state law (quiet title,
6 fraud, accounting) along with one TILA claim. None of the claims
7 invoke a substantive right created by federal bankruptcy law, so
8 they do not "arise under" Title 11. Eastport Assocs. v. City of
9 L.A. (In re Eastport Assocs.), 935 F.2d 1071, 1076 (9th Cir.
10 1991). Similarly, as the bankruptcy court observed, because all
11 of these claims could exist outside of bankruptcy, they do not
12 "arise in" Title 11. Id. Therefore, at best, any jurisdiction
13 the bankruptcy court had over Sanders's claims could only consist
14 of "related to" jurisdiction.

15 "An action is related to bankruptcy if the outcome could
16 alter the debtor's rights, liabilities, options, or freedom of
17 action (either positively or negatively) and which in any way
18 impacts upon the handling and administration of the bankrupt
19 estate." Great W. Sav. v. Gordon (In re Fietz), 852 F.2d 455, 457
20 (9th Cir. 1988)(quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994
21 (3d Cir. 1984)); Linkway Inv. Co. v. Olsen (In re Casamont
22 Investors, Ltd.), 196 B.R. 517, 521 (9th Cir. BAP 1996).

23 Conceivably, the outcome of this proceeding could have altered
24 Sanders's rights and liabilities, which could have impacted the

25
26 ⁷ Although Sanders attempts to assert various "arguments"
27 about the merits of the Countrywide Adversary Proceeding in his
28 Table of Contents, that issue is not before us on appeal because
that proceeding was not dismissed on its merits. Therefore, we do
not address it. Even if we could address it, Sanders has failed
to properly brief the issue.

1 administration of his bankruptcy estate. As a result, the
2 bankruptcy court had related to jurisdiction over the Countrywide
3 Adversary Proceeding.

4 Sanders appears to contend that the bankruptcy court was
5 under the misapprehension that the Countrywide Adversary
6 Proceeding did not survive the dismissal of his bankruptcy case,
7 and the court erred for dismissing it on that basis. Both the
8 Ninth Circuit and this Panel have held that bankruptcy courts are
9 not automatically divested of jurisdiction over related cases when
10 the underlying bankruptcy case has been dismissed. Carraher v.
11 Morgan Elecs., Inc. (In re Carraher), 971 F.2d 327, 328 (9th Cir.
12 1992); In re Casamont Investors, Ltd., 196 B.R. at 525. However,
13 a review of the transcript from August 7, 2012, reveals that the
14 bankruptcy court was simply declining to exercise jurisdiction
15 over clearly what were claims based primarily in state law that
16 could be heard in state or federal court.

17 The bankruptcy court is afforded discretion to determine
18 whether to retain jurisdiction over adversary proceedings when the
19 underlying bankruptcy case is dismissed and may do so "when
20 judicial economy, convenience, fairness and comity favor
21 retention." In re Casamont Investors, Ltd., 196 B.R. at 522, 525.
22 The weighing of these factors is discretionary. Id. at 522 n.3.
23 While the bankruptcy court did not expressly articulate each of
24 these factors on the record, findings the court did make and the
25 record supports its decision to not retain jurisdiction over the
26
27
28

1 Countrywide Adversary Proceeding.⁸

2 Judicial economy. The Countrywide Adversary Proceeding had
3 just been filed the day of the dismissal hearing on August 7,
4 2012. This factor clearly weighs in favor of not retaining
5 jurisdiction. Compare In re Casamont Investors, Ltd., 196 B.R. at
6 523 (adversary proceeding pending two months at time of dismissal
7 did not favor retention; retention of jurisdiction is improper
8 when the initiation of the dispute is recent), with
9 In re Carraher, 971 F.2d at 327 (adversary proceeding pending six
10 years at time of dismissal weighed in favor of retention).

11 Convenience. The Countrywide Adversary Proceeding had been
12 pending only one day when Sanders's bankruptcy case got dismissed.
13 Further, as the bankruptcy court pointed out, nothing prevented
14 Sanders from pursuing his claims in state or, if applicable,
15 federal court. The inconvenience of having to re-file a complaint
16 in state court does not warrant retention of jurisdiction.
17 In re Casamont Investors, Ltd., 196 B.R. at 524. This factor
18 weighs in favor of not retaining jurisdiction.

19 Fairness. Again, because the proceeding had been pending
20 only one day, the parties were not prejudiced by dismissal. See
21 In re Carraher, 971 F.3d at 328 (proceeding dragged on for six
22 years); Fid. & Deposit Co. of Md. v. Morris (In re Morris),
23 950 F.2d 1531, 1534 (11th Cir. 1992)(more than four years); Smith

24
25 ⁸ Unfortunately, neither party included a copy of the
26 complaint in the record for our review. We therefore exercised
27 our discretion to obtain a copy of it from the bankruptcy court's
28 electronic docket. See O'Rourke v. Seaboard Sur. Co. (In re E.R.
Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v.
Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9
(9th Cir. BAP 2003).

1 v. Commercial Banking Corp. (In re Smith), 866 F.2d 576, 580 (3d
2 Cir. 1989)(more than four years). This factor also disfavors
3 retention.

4 Comity. Since nearly all of Sanders's claims were based on
5 state law, and because no bankruptcy issues were present, comity
6 weighs in favor of dismissal.

7 All of the above factors weighed in favor of the bankruptcy
8 court declining to retain jurisdiction over the Countrywide
9 Adversary Proceeding. Accordingly, it did not abuse its
10 discretion in dismissing it.

11 **C. The bankruptcy court did not err in granting the UST judgment**
12 **for unpaid quarterly fees, but we must modify the amount**
awarded.

13 The Code authorizes the United States Trustee to collect
14 mandatory quarterly fees from a party who files a chapter 11
15 bankruptcy case. See 28 U.S.C. § 1930(a)(6); Tighe v. Celebrity
16 Home Entm't, Inc. (In re Home Entm't, Inc.), 210 F.3d 995, 998
17 (9th Cir. 2000). The quarterly fee is calculated according to the
18 amount of disbursements to creditors during each quarter of the
19 debtor's case. Id. If a chapter 11 debtor makes zero
20 disbursements during the quarter, as was the case here, the
21 minimum fee the debtor must pay is \$325 for that quarter. See
22 28 U.S.C. § 1930(a)(6).

23 Sanders failed to pay quarterly fees for the first, second
24 and third quarters of 2012. Sanders does not dispute that he owes
25 the fees, but contends only that the UST was awarded too much.
26 The UST agrees and admits that the correct amount due and payable
27 by Sanders is \$977.06, which comprises the \$325 minimum fee for
28 the three unpaid quarters of 2012, plus statutory interest of

1 \$2.06 pursuant to 31 U.S.C. § 3717.

2

VI. CONCLUSION

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Based on the foregoing reasons, we AFFIRM the dismissal of the chapter 11 case and the adversary proceedings. We further AFFIRM the bankruptcy court's decision to award the UST quarterly fees, but we modify the amount awarded to \$977.06.