

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**October 1, 2020 at 2:00 p.m.**

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1. [20-90435](#)-E-11      CHARLES MACAWILE      CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-22-20 [1]

**SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:  
Continued from 8/6/20

Trustee Report at 341 Meeting lodged 8/13/20. Debtor did not appear. Counsel for Debtor did appear. Continued to 8/21/20.

Trustee Report at 341 Meeting lodged 8/21/20. Debtor and Debtor's Counsel appeared. Meeting concluded.

[DCJ-2] Debtor's Motion to Extend Deadline for Filing Plan of Reorganization filed 9/21/20 [Dckt 34], set for hearing 10/22/20 at 10:30 a.m.

**The Status Conference is Continued to XXXXXXXX**

**OCTOBER 1, 2020 STATUS CONFERENCE**

The First Meeting of Creditors was held on August 21, 2020. U.S. Trustee August 21, 202 Docket Entry Report. On September 21, 2020, the Debtor in Possession/Debtor filed a Motion to Extend the Deadline for Filing a Plan of Reorganization in the Subchapter V case. Dckt. 34 (set for hearing on October 22, 2020). The Subchapter V deadline for filing a plan by the Debtor in Possession/Debtor was set to expire on September 21, 2020.

At the Status Conference XXXXXXXX

**October 1, 2020 at 2:00 p.m.**  
**- Page 1 of 12**

## **AUGUST 6, 2020 STATUS CONFERENCE**

This Subchapter V case was commenced on June 22, 2020. David Sousa has been appointed as the Subchapter V Trustee in this case.

The Debtor and Debtor in Possession (Congress having referred to both in Subchapter V) filed the Chapter 11 Status Report on July 23, 2020. Dckt. 26. The estate includes a 32-bed assisted living facility that is encumbered. A balloon payment on the loan secured by the facility came due on April 1, 2020. Additionally, there was a default in August 2019, and a foreclosure was commenced.

The Debtor obtained a loan commitment to take out the obligation secured by the facility and to provide some additional operating capital. However, the Debtor and Debtor in Possession question when the proposed lender can perform.

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/16/20. The Debtor in Possession reporting that the adequate protection payments are being made as provided in the order thereon. The Debtor in Possession waiting on the joint venture documents.

Operating Reports filed: 7/26/20; 8/14/20; 9/23/20

**The Status Conference is xxxxxxxx**

### OCTOBER 1, 2020 STATUS CONFERENCE

This voluntary Chapter 11 case was filed on January 21, 2020. The latest Monthly Operating Report is for August 2020 and was filed on September 23, 2020. Dckt. 74. This Report states that the total cash receipts for the Estate since the commencement of this case has been \$140, all of which is identified as "Capital Contributions." The only expenses are \$40 for "Bank service charge- net." The last action shown by the Debtor in Possession on the Docket is the filing of an Opposition to a motion for relief from the stay on May 5, 2020. Dckt. 52. Counsel for the Debtor in Possession has participated in the hearings on that Motion and the July 16, 2020 Status Conference.

At the Status Conference xxxxxxxx

### JULY 16, 2020 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession. The court recently entered an adequate protection order, with a continued hearing on the Motion for Relief set for August 6, 2020. Other than seeking the employment of counsel, the Debtor in Possession has not filed any motions, proposed plan, or proposed disclosure statement.

At the Status Conference, counsel for the Debtor in Possession reports that the adequate protection payments are being made as provided in the order thereon. The Debtor in Possession is waiting on the joint venture documents.

### APRIL 2, 2020 STATUS CONFERENCE

On March 2, 2020, the court issued an Order to Show Cause why a Chapter 11 trustee should not be appointed in light of the Debtor's powers as a limited liability company ("LLC Powers") having been suspended by the State of California. OSC, Dckt. 24; *see also* discussion below from the February 27, 2020

Status Conference. The Order to Show Cause required that Responsive Pleadings be filed and served on or before March 19, 2020, and Replies, if any, on or before March 26, 2020.

The U.S. Trustee filed a Response on March 16, 2020. Dckt. 29. The U.S. Trustee supports the appointment of a Chapter 11 trustee in light of the Debtor having its LLC Powers suspended.

No Response to the Order to Show Cause was filed by the Debtor, nor a Reply to the U.S. Trustee request that a Chapter 11 trustee be appointed.

However, on March 23, 2020, the California Franchise Tax Board filed a document titled "California Franchise Tax Board's Limited Purpose Revivor." Dckt. 34. This Limited Purpose Revivor states:

PLEASE TAKE NOTICE that, pursuant to California Revenue and Taxation Code § 23305b, California Franchise Tax Board ("FTB") hereby **revives Sun-One LLC to good standing until the earlier of the following occurs: (1) this case is dismissed, or (2) this case is closed.** FTB reserves the right to revoke this Limited Purpose Revivor by filing a revocation in this case in which this Limited Purpose Revivor will have no further force or effect.

*Id.* (emphasis added).

With this Revivor the issue of the ability to the Debtor to exercise its LLC Powers and serve as the debtor in possession has been resolved.

Prosecution of the Case and a Chapter 11 Plan

At the Status Conference, counsel for the Debtor in Possession explained, that the joint venture partner should be able to step up with a proposal to get this matter resolved.

## **FEBRUARY 27, 2020 STATUS CONFERENCE**

This voluntary Chapter 11 case was filed by the Debtor on January 21, 2020, with the Debtor in Possession now serving as the fiduciary of the bankruptcy estate. The Managing Member executing the bankruptcy Petition is Kathryn Machado.

On Schedule A/B the Debtor lists owning one asset, real property described as 141 acres, Sims Road, Chinese Camp, Tuolumne County, California, stated to have a value of \$4,390,000. Dckt. 1 at 5. Debtor lists owning no personal property. *Id.* at 4-5.

Ms. Machado's name and the property appeared familiar to the court, and reviewing the court's files appears to tie this property and Ms. Machado to the Chapter 7 case (converted from Chapter 11) filed by Richard Sinclair, who was identified as Ms. Machado's brother. 14-91565. The real property is property that Richard Sinclair asserted had been gifted to Golden Hills Chinese Camp, LLC. *Id.*, Motion to Abandon, Dckt. 554.

On Schedule D, Debtor lists two creditors. The first is Superior Loan Servicing (which does not appear to be the actual creditor but a loan servicer for the actual creditor), with a claim of (\$662,500.00). Dckt. 13 at 8. The Debtor also lists the Tuolumne County Tax Collector as having a secured claim for (\$2,200.00) *Id.* For priority unsecured claims, Debtor states on Schedule E/F owing (\$2,000.00) for the “annual franchise tax.” *Id.* at 10. No creditors with general unsecured claims are listed.

On the Statement of Financial Affairs for income in 2020, Debtor lists \$0.00. For income in 2019, Debtor lists \$0.00. For income in 2018, Debtor lists \$0.00. *Id.* at 14. Debtor further reports that Sun-One, LLC has been in real estate development since July 21, 2013. <sup>FN. 1.</sup>

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FN. 1. The California Secretary of State reports that Sun-One, LLC’s status is “FTB Suspended.” The Secretary of State reports that Golden Hills Chinese Camp, LLC is also a suspended entity. The managing member of that entity is also Kathryn Machado, with the same address as the Kathryn Machado in this case. The original Articles of Organization were filed April 29, 2003, with Richard Sinclair identified as the agent for service of process and organizer of that entity.  
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On February 15, 2020, the Debtor in Possession filed an initial Status Report. Dckt. 20. Counsel for the Debtor in Possession states that the property is to be developed, but the tentative entitlements have expired. However, the Debtor in Possession believes that the development can be revived “once working capital is available.” *Id.*, p. 1:27 -2:1.

The Debtor in Possession further reports that in March 2018, the Debtor obtained a high interest rate, high fees loan of \$600,000. The interest only payments on this loan are stated to be \$6,250.00 a month, which indicates an interest rate of 12.5% for a grossly oversecured (by the Debtor’s estimate of value) loan. Being unable to make the interest payments, the creditor proceeded with foreclosure, and this bankruptcy case was filed to stop the foreclosure (a valid use of bankruptcy – so long as it is done with the intention to prosecute the bankruptcy case and possible plan in good faith).

The Debtor in Possession states that the Debtor in Possession plans on filing a plan of reorganization (not liquidation) by April 20, 2020.

The U.S. Trustee’s report of the First Meeting of Creditors states that counsel for the Debtor in Possession appeared, but no responsible representative appeared for the Debtor or Debtor in Possession. U.S. Trustee February 19, 2020 Docket Entry Report. The first meeting was continued to February 27, 2020.

At the Status Conference counsel for the Debtor stated that the status of the Debtor would be unsuspended by the time of the continued status conference.

**SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/16/20

Operating Reports filed: 8/11/20 [May, Jun]; 8/19/20 [Jul]

[JWC-1] Stipulation to Continue Hearing on Secured Creditor BMO Harris Bank's Motion for Relief from the Automatic Stay [Personal Property] filed 7/30/20 [Dckt 65]; Order approving filed 8/7/20 [Dckt 72]; [JWC-1] Second Stipulation to Continue Hearing filed 8/20/20 [Dckt 83]; Order approving filed 8/20/20 [Dckt 85]

[RAP-1] Stipulation for: (1) Adequate Protection Payments; (2) Relief from Stay Upon Default filed 8/3/20 [Dckt 67]; Order approving filed 8/7/20 [Dckt 71]

Trustee Report at 341 Meeting lodged 8/4/20. Debtor and Debtor's counsel appeared. Continued to 8/21/20

[DCJ-3] Debtor's Motion to Extend Deadline for Filing Plan of Reorganization filed 8/13/20 [Dckt 77]; Order approving filed 8/31/20 [Dckt 89]

Trustee Report at 341 Meeting lodged 8/24/20. Debtor and Debtor's counsel appeared. Meeting Concluded.

[JWC-1] Order granting Motion for Relief from Automatic Stay filed by BMO Harris Bank, N.A. filed 9/14/20 [Dckt 92]

[HRH-1] Motion for Relief from Stay [PNC Equipment Finance, LLC] filed 9/16/20 [Dckt 93], set for hearing 10/1/20 at 10:00 a.m.

**The Status Conference is XXXXXXXX**

**OCTOBER 1, 2020 STATUS CONFERENCE**

This Chapter 11 Subchapter V case was filed on May 15, 2020. The court extended the deadline for the Debtor in Possession/Debtor to file the Chapter 11 plan through and including September 30, 2020. In the August 2020 Monthly Operating Report filed September 24, 2020 (Dckt. 101), the Debtor in Possession/Debtor reports \$1,864,845 in cash receipts and (\$1,885,736) in cash disbursement since the commencement of this case for the Bankruptcy Estate.

**October 1, 2020 at 2:00 p.m.**

**- Page 6 of 12**

At the Status Conference, **XXXXXXXX**

## **JULY 16, 2020 STATUS CONFERENCE**

The Debtor in Possession filed a Status Report on July 10, 2020. The Report discusses the estate's trucking business and the impact caused by the COVID-19 pandemic. Dckt. 57. The Debtor in Possession projects filing a plan and disclosure statement before August 13, 2020.

At the Status Conference counsel for the Debtor in Possession reported that a resolution has been reached for the claim that is the subject of the pending motion for relief from the stay, and that resolution will be the template for addressing other secured claims.

The bookkeeper at the business is new, who is working to clean up what was left by the prior bookkeeper.

The deadline for claims is in a week, and to date, no "surprise" claims have been filed.

David Souza, the Subchapter V Trustee, reports that he and the Debtor in Possession counsel are working with creditors. The Subchapter V Trustee is concerned over the books and records.

There were several loans taken out by the Debtor prior to the bankruptcy, which have a substantial interest rate that may be usurious. The payments to these high interest creditors without 90 days of the filing is \$289,000.

4. [16-90157-E-7](#)      **DARYL FITZGERALD**  
[18-9011](#)  
**FITZGERALD V. TRELIS COMPANY**

**TRIAL RESCHEDULING CONFERENCE**  
**RE: COMPLAINT**  
**6-25-18 [1]**

Plaintiff's Atty: Richard Kwun  
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18  
Answer: 7/26/18

Nature of Action:  
Dischargeability - student loan  
Dischargeability - other

Notes:  
Set by order of the court filed 8/17/20 [Dckt 147]

**The Trial Rescheduling Conference is XXXXXXXX**

#### **OCTOBER 1, 2020 RESCHEDULING CONFERENCE**

The Hearing on Vacating the Trial Date for this Adversary Proceeding was conducted on August 13, 2020. With the Federal Courthouse remaining closed to the public due to the COVID-19 Pandemic, conducting the trial in person at the Courthouse on September 2, 2020, was not practical. Though it would be possible to conduct the trial by Zoom, such would not be optimal, especially in light of there being a *pro se* party who does not regularly interact with the federal judicial process.

Fortunately, due to this court's light trial schedule (with most matters being determined on the law and motion calendar), once the Federal Courthouse is reopened, the court can immediately reset the trial, which in theory could be set as soon as a week (or whatever prompt reasonable time is required of the parties for their "trial eve" preparation and arranging for the appearance of witnesses) from the trial rescheduling conference. All of the parties have prepared and lodged with the court their direct testimony statements, exhibits, trial briefs, objections, and responses consistent with the trial Scheduling Order (Dckt. 129).

At the October 1, 2020 Rescheduling Conference, XXXXXXXX

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/6/20. Debtor in Possession stated a settlement for modification of the loan has been reached, with the modification documents being prepared.

[DCJ-1] Order Approving Employment of Attorney for Debtor in Possession filed 8/7/20 [Dckt 29]

**The Status Conference is XXXXXXXX**

### OCTOBER 1, 2020 STATUS CONFERENCE

Nothing further has been filed since the August 6, 2020 Status Conference. Counsel for the Debtor in Possession reports XXXXXXXX

### AUGUST 6, 2020 STATUS CONFERENCE

The Debtor in Possession has not filed an updated status report. At the Status Conference, counsel for the Debtor in Possession reported that this single asset case and a settlement for modification of the loan has been reached, with the modification documents being prepared. It is likely that the case will be dismissed once the modification is granted.

### JUNE 4, 2020 STATUS CONFERENCE

Debtor IGB Group, Inc. commenced this voluntary Chapter 11 case on April 27, 2020, and is serving as the Debtor in Possession. The First Meeting of Creditors has been continued to June 26, 2020. In a Status Report filed on May 19, 2020, the Debtor in Possession states that the property of the estate consists of 6.9 acres of property that has a 3,600 square foot home, 6,000 square foot barn, and a former koi farm. This property was purchased eighteen months before the filing of this case. However, the principals of the Debtor are stated to have been the victims of unrelated fraud, which has impaired the ability to proceed with the development of the property.

The 90th day period after the commencement is July 26, 2020, and the Debtor in Possession intends to have a plan on file by that time. The plan is intended to be one of reorganization, not liquidation.

At the Status Conference the Debtor in Possession reported that an agreement has been reached to modify the loan to extend its due date (it all having come due).

## FINAL RULINGS

6. [20-90205-E-11](#) JSL LAND COMPANY, INC. STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-13-20 [\[1\]](#)

**CASE DISMISSED: 07/26/2020**

**FINAL RULING: No Appearance at the October 1, 2020 Status Conference is Required.**

### **SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

Order setting Post-Dismissal status conference filed 7/26/20 [Dckt 68]. Set to determine if there are any pending matters that should delay the closing of the case by the Clerk of the Court.

**The Status Conference is concluded and Removed From the Calendar.**

7. [20-90183-E-7](#)      **JARRED/MELISSA WESTFALL**      **CONTINUED STATUS CONFERENCE RE:**  
[20-9007](#)      **RODRIGUEZ-WESTFALL V. BANK OF**      **COMPLAINT**  
**AMERICA, N.A.**      **6-29-20 [1]**

**FINAL RULING: No Appearance at the October 1, 2020 Status Conference is Required.**

Plaintiff's Atty: Shane Reich  
Defendant's Atty: unknown

Adv. Filed: 6/29/20  
Answer: none

Nature of Action:  
Recovery of money/property - preference

Notes:  
Continued from 8/27/20 to allow the Parties to consummate the settlement and dismiss this Adversary Proceeding.

**The Status Conference is concluded and removed from the Calendar.**

### **OCTOBER 1, 2020 STATUS CONFERENCE**

On September 25, 2020, Counsel for Plaintiff-Debtor Melissa Rodriguez-Westfall filed a pleading titled Request for Dismissal of Adversary Proceeding. Dckt. 8. The Request provides noticed that this Adversary Proceeding has been settled and that the Plaintiff-Debtor requests that the Adversary Proceeding be dismissed.

The use of the word "Requests" makes it appear as a Motion to Dismiss, rather than an exercise of the Plaintiff-Debtor's unilateral right to dismiss this Adversary Proceeding as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure.

To avoid any confusion, the court interprets the Request filed on September 25, 2020, as a Motion for an affirmative order dismissing this Adversary Proceeding without prejudice (as it would be for a Rule 41(a)(1)(A)(i) dismissal).

The Court shall issue an order in substantially the following form:

### **ORDER DISMISSING ADVERSARY PROCEEDING**

Melissa Rodriguez-Westfall, the Plaintiff-Debtor, having filed a Request for Dismissal of this Adversary Proceeding that advises the court this matter has been resolved by a settlement, Plaintiff-Debtor having the unilateral right to dismiss this

Adversary Proceeding without prejudice as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, and good cause appearing;

**IT IS ORDERED** that this Adversary Proceeding is dismissed without prejudice.