

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

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

**November 7, 2019 at 2:00 p.m.**

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1. 18-90906-E-7      **MELISSA VASQUEZ**    **CONTINUE STATUS CONFERENCE RE:**  
19-9007    **COMPLAINT**  
**UNITED STATES V. VASQUEZ**      **3-19-19 [1]**

Plaintiff's Atty: Jeffrey J. Lodge  
Defendant's Atty: Frank M. Pacheco

Adv. Filed: 3/19/19  
Answer: 5/23/19  
               7/8/19

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - other

Notes:  
Continued from 8/29/19

**The Status Conference is ~~XXXXXXXXXX~~.**

**SUMMARY OF COMPLAINT**

The United States of America, "Plaintiff" commenced this Adversary Proceeding on March 19, 2019 with the filing of the Complaint (Dckt. 1), which allegations include:

1. Defendant Debtor received payments from the Social Security Administration based on her alleged disability.
2. Defendant Debtor filed her application for disability benefits in April 2006 and began receiving benefits in May 2006. Plaintiff-Debtor is obligated to notify the Social Security Administration in changes concerning her eligibility for benefits as stated in her application.

3. Though receiving disability benefits, Defendant Debtor was actually employed and working during the period July 2007 through January 2008, and January 2009 through February 2011.
4. Defendant Debtor received \$56,882.70 in benefits to which she was not entitled. These were obtained by Debtor not reporting the changes in her condition that she presented
5. It is alleged that the obligation to repay the \$56,882 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).
6. The Complaint also request that the court issue a “mere” Declaratory Judgment that the United States may seek to recouped against future benefits (as opposed to a judgment affirmatively authorizing the recoupment).

## **SUMMARY OF ANSWER**

Melissa Vasquez, the Defendant-Debtor, filed a *pro se* answer on July 8, 2019 (a prior answer document was filed in *pro se*, the court using the last filed as Defendant Debtor’s answer. This was filed a week before counsel substituted in to represent the Defendant Debtor. The *pro se* answer filed by Defendant Debtor’ includes:

1. Defendant Debtor addresses conditions of her disability.
2. Defendant Debtor alleges communications with the Social Security Administration.
3. The Answer admits and denies specific allegations in the Complaint.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff United States alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), (O). Complaint ¶ 1, Dckt. 1. In her *pro se* Answer, Defendant does not expressly admit or deny these allegations. Answer, Dckt. 11.

The determination of the nondischargeability of debt is a core matter proceeding arising under the Bankruptcy Code, 11 U.S.C. § 523(a). **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

## **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff United States alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and **157(b)(2)**, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), (O). Complaint ¶ 1, Dckt. 1. In her *pro se* Answer, Defendant does not expressly admit or deny these allegations. Answer, Dckt. 11.

The determination of the nondischargeability of debt is a core matter proceeding arising under the Bankruptcy Code, 11 U.S.C. § 523(a). To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are “related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, **2019**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----**  
**-----, 2020**.

Debtor's Atty: Reno F.R. Fernandez; Matthew J. Olson Daniel E. Vaknin

Notes:

Continued from 3/28/19

**The Status Conference is continued to 2:00 p.m. on ~~XXXXXXXXXX~~, 2020.**

Oper

ating Reports filed: 5/2/19 [Feb]; 5/15/19 [Mar]; 6/20/19 [Apr]; 7/10/19 [May]; 8/22/19 [Mar, Apr, May, Jun, Jul]; 10/29/19 [Aug]

[MF-11] *Ex Parte* Application for Authority to Employ Jay D. Crom of Bachecki, Crom & Co., LLP, Certified Public Accountants for Debtor in Possession filed 3/28/19 [Dckt 134]; Order granting filed 4/1/19 [Dckt 151]

[MF-12] Motion to Assume Executory Contract with Love's Travel Stops & Country Stores, Inc. filed 4/4/19 [Dckt 157]; Order granting filed 5/3/19 [Dckt 253]

[MF-13] Second Omnibus Motion to Assume Executory Contracts (Carrier Contracts) filed 4/4/19 [Dckt 163]; Order granting filed 4/22/19 [Dckt 236]

[MF-14] Third Omnibus Motion to Assume Executory Contracts filed 4/4/19 [Dckt 175]; Order granting filed 4/7/19 [Dckt 184]

Debtor in Possession's Motion for Approval of the Debtor in Possession's Adequate Protection Stipulation with:

-Banc of America Leasing & Capital, LLC filed 4/18/19 [Dckt 198]; Order granting filed 5/3/19 [Dckt 254]

-First Midwest Equipment Finance Co. filed 4/18/19 [Dckt 202]; Order granting filed 5/3/19 [Dckt 257]

-People's Capital and Leasing Corp. filed 4/18/19 [Dckt 206]; Order granting filed 5/3/19 [Dckt 258]

-TCF Equipment Finance, a Division of TCF National Bank filed 4/18/19 [Dckt 214]; Order granting filed 5/6/19 [Dckt 268]

-Wells Fargo Equipment Finance, Inc. filed 4/18/19 [Dckt 218]; Order approving filed 5/3/19 [Dckt 252]

-Hitachi Capital America Corp. filed 4/18/19 [Dckt 222]; Order granting filed 5/3/19 [Dckt 262]

-Transportation Alliance Bank, Inc. filed 5/7/19 [Dckt 269]; Order granting filed 5/28/19 [Dckt 297]

-Signature Financial LLC filed 4/18/19 [Dckt 210]; Order granting filed 5/3/19 [Dckt 259]

-Mercedes-Benz Financial Services USA LLC dba Daimler Truck Financial filed 9/12/19 [Dckt 356]; Order granting filed 10/8/19 [Dckt 376]

[MF-7] Order granting Motion for Contempt And/Or Sanctions for Violation of the Automatic Stay filed 5/3/10 [Dckt 263]

[MF-23] Motion for Authority to Employ James R. Arnold Doing Business as The Arnold Law Practice as Special Litigation Counsel for the Debtor in Possession and to Pay a Post-Petition Retainer filed 5/28/19 [Dckt 290]; Order granting filed 7/11/19 [Dckt 313]

[MF-24] Motion to Approve Compromise with Nevada County District Attorney filed 6/27/19 [Dckt 304]; Order granting filed 7/22/19 [Dckt 317]

[MF-25] *Ex Parte* Motion for Authority to Employ Anne Burton Walsh and Anna Aguilar of Aguilar Bentley LLC as Special Counsel for the Debtor in Possession filed 7/26/19 [Dckt 322]; Order granting filed 8/6/19 [Dckt 335]

[MF-26] First Interim Application for Approval of Compensation and Reimbursement of Expenses of Macdonald Fernandez LLP as Counsel for Debtor in Possession filed 8/2/19 [Dckt 326]; Order granting filed 9/2/19 [Dckt 352]

[MF-4] Interim Order authorizing use of cash collateral filed 8/5/19 [Dckt 334]

[RWR-1] *Ex Parte* Application of TCF Equipment Finance, a Division of TCF National Bank for Relief from Stay Pursuant to the Terms of an Adequate Protection Stipulation filed 9/13/19 [Dckt 361]

[MF-29] First Interim Application for Approval of Compensation and Reimbursement of Expenses of Anne Burton Walsh and Anna Aguilar of Aguilar Bentley LLC as Special Counsel for Debtor in Possession filed 10/3/19 [Dckt 368]

Status Conference Statement filed 10/21/19 [Dckt 386]

### **NOVEMBER 7, 2019 STATUS CONFERENCE**

The Debtor in Possession filed an updated Status Report on October 21, 2019. Dckt. 386. The ΔIP reports as to the assumption of executory contract and entry into adequate protection stipulations. The ΔIP continues with new negotiations, including attempting to enter into agreements with several creditors who has been granted relief from the stay. The existing adequate protection orders are identified by the ΔIP as follows:

- i. Wells Fargo Equipment Finance, Inc. FRB-1, ECF Nos. 218 (motion); 252 (order);
- ii. Banc of America. MF-15, ECF No. 198 (motion); 254 (order);
- iii. First Midwest. MF-16, ECF Nos. 202 (motion); 257 (order);
- iv. People's Capital. MF-17, ECF Nos. 206 (motion); 258 (order);
- v. Signature Financial. MF-18, ECF Nos. 210 (motion); 259 (order);
- vi. TCF Equipment Finance. MF-19, ECF Nos. 214 (motion); 268 (order);
- vii. Hitachi. MF-20, ECF Nos. 222 (motion); 262 (order);

viii. Transportation Alliance Bank, Inc. MF-22, ECF Nos. 269 (motion); 297 (order);

ix. Daimler. MF-28, ECF Nos. 365 (motion); 376 (order).

The Debtor in Possession intends to pursue a plan in this case, stating that it is continuing to unwind the results from the asserted improper conduct of an officer of the Debtor.

At the Status Conference, counsel for the DIP further reported **XXXXXXXXXX**

### **MARCH 28, 2019 STATUS CONFERENCE**

The court has conducted a number of special hearings in this case, some of which had final hearings on the March 28, 2019 a.m. calendar.

#### **Summary of Schedules.**

On Schedule A/B the estate's assets of significant value are: (1) \$57,000 in business checking account; \$1,981,000 in accounts receivable; (3) \$298,000 in equipment and supplies; (4) \$16,859,000 in truck and trailer equipment; and (5) \$2,000,000 litigation claims.

On Schedule D secured claims of \$17,698,000 are listed. On Schedule E/F Debtor lists \$1,800,000 in priority unsecured claims and \$2,781,000 in general unsecured claims.

At the Status Conference counsel for the Debtor in Possession reported that a financing broker, an accountant, and a financial advisor will be employed. Adequate protection stipulations are being documented and motions filed.

The Debtor in Possession is reviewing transactions involving the former CEO, including with merchant cash advance companies (with up to \$1,000,000 in payments in question).

3. [19-90440-E-7](#)      LESLIE KINSEY  
[19-9015](#)  
MORGAN V. KINSEY

STATUS CONFERENCE RE:  
COMPLAINT  
9-9-19 [1]

**Final Ruling: No appearance at the November 7, 2019 Status Conference is required.**  
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Plaintiff's Atty: Tom Morgan  
Defendant's Atty: unknown

Adv. Filed: 9/9/19  
Answer: none  
Reissued Summons: 10/25/19

Nature of Action:  
Objection/revocation of discharge

Notes:

Reissued Summons 10/25/19

<p><b>The Status Conference is continued to 2:00 p.m. on December 19, 2019 (the date and time stated on the Reissued Summons, Dckt. 6).</b></p>
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### SUMMARY OF COMPLAINT

Tom Morgan ("Plaintiff"), in pro se, has filed a document with the court titled "Adversary Complaint" which alleges:

- A. Defendant-Debtor impersonated being a contractor, entering into a contractual agreement with Plaintiff.
- B. During the work process, Defendant-Debtor did not submit Workmen's Comp certificates, payroll vouchers, and proof of insurance.
- C. Plaintiff discovered that Defendant-Debtor was paying his employees cash and was not making the required payments for the required employee comp, disability, and unemployment insurance for his employees.
- D. In January 2000, Defendant-Debtor abandoned the work for which he was contracted by Plaintiff.
- E. Plaintiff turned over the asserted breach of contract claim to an attorney to resolved.

F. Suit was filed in Sonoma Superior Court, with a fraud judgment being entered in favor of Plaintiff.

G. The Exhibits attached to the Adversary Complaint include:

1. Calculation of Judgment Obligation to be \$107,044.59, computed to May 13, 2019. Dckt. 1 at 3.
2. Abstract of Judgment, showing Judgment Renewal date of April 14, 2011. *Id.* at 9.
3. Notice of Renewal of Judgment. *Id.* at 19.
4. Default Judgment. *Id.* at 27-28.
  - a. The Default Judgment includes specific findings of the State Court of fraud.

Though one could divine what relief Plaintiff may be seeking, the Adversary Complaint does not stated any specific relief requested.

#### **REISSUED SUMMONS AND CERTIFICATE OF SERVICE**

On October 25 2019, the Clerk of the Court reissued a Summons in this Adversary Proceeding. The Certificate of Service by Plaintiff states that it was served on the Defendant-Debtor by U.S. Mail on October 29, 2019. The address used for the service is the Post Office Box mailing address listed by Defendant-Debtor in his bankruptcy case. 19-90440; Dckt. 1 at 2.

#### **SUMMARY OF ANSWER**

No Answer has been filed.



4. [17-90346-E-7](#) ENRIQUEZ/LISA SANCHEZ CONTINUED STATUS CONFERENCE RE:  
[17-9011](#) COMPLAINT  
SANCHEZ V. SANCHEZ ET AL 8-21-17 [1]

**Final Ruling: No appearance at the November 7, 2019 Status Conference is required.**  
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**Dismissed 10/31/19**

Order Dismissing Adversary Proceeding filed 10/31/19 [Dckt 34]

**This Adversary Proceeding having been dismissed (Order, Dckt. 34) the Status Conference is removed from the Calendar.**

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 10/17/19, the court being informed of conflicts with proceedings in other cases.

### NOVEMBER 7, 2019 STATUS CONFERENCE

No updated Post-Confirmation Status Report has been filed by the Debtor, Plan Administrator, or any Creditors who have asserted breaches of the Plan. The court's review of the California Secretary of State website shows that G Street Investments, LLC, for which Mark McManis is listed as the agent for service of process is still listed as having its Status "suspended."

The second G Street Investments, LLC entity for which LegalZoom.Com. Inc. Is the agent for service of process, which is located at the Debtor's bail bond office, and Debtor Mark Garcia is listed as the managing member, is listed as a limited liability company with an Active Status.

At the Status Conference, **XXXXXXXXXX**

### OCTOBER 17, 2019 POST-CONFIRMATION STATUS CONFERENCE

The Successor Plan Administrator filed a Status Report on September 13, 2019. He reported as to the funding of the Plan to that date.

On September 16, 2019, the court conducted a hearing on the Motion for Order Enforcing Payment of Obligations filed by G Street Investments. The court's sixteen page Civil Minutes address in detail the issues arising therein and apparent deficiencies in performing the Plan and G Street Investments having its corporate/LLC status suspended by the State of California. Dckt. 1093. A review of the California Secretary of State website on October 15, 2019, by the court revealed that this entity's status is still reported as suspended. <sup>FN. 1</sup> For the suspended limited liability company Mark McManis is listed as the agent for service of process, with a Modesto street address of 914 13<sup>th</sup> Street, Modesto California. The Statement of No Change in information was filed by G Street Investments, LLC on April 3, 2017, with it being signed by Ian McDonald, as "Attorney." The sole managing member of G Street Investments, LLC is stated to be Therese Tuttle. Statement of Information, filed July 22, 2013 with the Secretary of State.

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FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=g+street+investments&SearchSubType=Keyword>  
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Interestingly, the Secretary of State also reports that another limited liability company with the name “G Street Investments, LLC” was registered on March 29, 2019. This entity has an address of 900 G Street, #100, Modesto, California. The registration document for this second G Street Investment, LLC states that it has one manager and the organizer was the Secretary of Legalzoom.com, Inc., with that same entity listed as the agent for service of process. The Statement of Information for this second limited liability company lists the one manager being “Mark A. Garcia.”

Also interesting is that one of the two Debtors in this case is “Mark Anthony Garcia.” An internet search of the 900 G Street, No. 100 address turns up the following: (1) address for Bail Bond Girl, (2) address for Garcia Family Bail Bonds - Bail Bond Girl, and (3) Garcia Family Bail Bonds - which appears to be the Debtor’s business.

The California Secretary of State reports that a corporation named Garcia Family Bail Bonds, Inc. Had it corporate status suspended.<sup>FN.2</sup> This entity is stated as having an address of 900 G Street, Suite 100, Modesto, California. Angela Garcia is listed as the Chief Executive Officer, Secretary, and Chief Financial Officer. Angela Marie Garcia is one of the Debtors in this bankruptcy case.

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FN. 2. <https://businesssearch.sos.ca.gov/CBS/Detail>  
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The Amended Disclosure Statement in this case states that the Debtors’ business operates under the name of “Garcia Family Bail Bonds.” Dckt. 739. It is further stated that the Debtor’s corporation operated as that business since 1999, but it was suspended “by the Debtors” shortly before the bankruptcy case was filed and they have operated as a sole proprietorship since shortly before this case was filed. This bankruptcy case was filed on November 30, 2012. The Secretary of State reports that the corporation was registered in January 2001. The suspension date for the corporation is reported to have been September 4, 2012, which is shortly before the filing of this case.

The replacement Plan Administrator contacted the courtroom deputy notify the court of a conflict with respect to this hearing and requested on behalf of the parties in interest that the Status Conference be continued while they work on addressing the plan issues.

## **FEBRUARY 14, 2019 STATUS CONFERENCE**

Gary Farrar, the Plan Administrator reports that as of the February 6, 2019 filing of Status Report #4, the plan payments were current except for January and February 2019. Dckt. 1015. The Plan Administrator anticipated these payments being current as of the February 2019 Status Conference.

Further, that Debtor has made the payments to creditors holding unsecured claims through the December 2018 payments.

The Plan Administrator addresses Debtor’s inability to close two loans to refinance the G Street commercial property secured claims and the funding for property that Debtor acquired by foreclosure through the operation of Debtor’s business. The Title Companies involved in the financing requested that court approval be obtained.

The Debtor filed on December 19, 2018, an *ex parte* motion for approval of such financing. The court denied the *ex parte* motion on December 21, 2018. Order, Dckt. 1014.

The Plan Administrator is now filing motions to obtain such orders, with an anticipated hearing date of March 14, 2019.

The Plan Administrator's Fourth Status Report indicating that the Plan is being performed by the Debtors, disbursements are being made to creditors, and the Debtor and Plan Administrator are prosecuting the refinance loans, the court continues the Status Conference by final ruling.

6. [16-90157-E-7](#)      **DARYL FITZGERALD**      **PRE-TRIAL CONFERENCE RE:**  
[18-9011](#)      **FITZGERALD V. TRELIS COMPANY**      **COMPLAINT TO DETERMINE**  
                **DISCHARGEABILITY OF STUDENT**  
                **LOAN**  
                **6-25-18 [1]**

**Final Ruling: No appearance at the November 7, 2019 Pre-Trial Conference is required.**  
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**Continued to 3/12/20 by order of the court filed 10/17/19 [Dckt 89]**

**The Pre-Trial Conference has been continued to 2:00 p.m. on March 12, 2020, by prior order of the Court (Dckt. 89).**

7. [19-90159-E-11](#)      **BARRENO ENTERPRISES, LLC**      **CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
2-25-19 [1]**

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/1/19, the court ordering the appointment of a Chapter 11 Trustee.

Operating Reports filed: 8/9/19; 9/27/19; 10/23/19 [Aug; Sept]

[UST-3] Application for Order Approving the Appointment of Chapter 11 Trustee filed 8/30/19 [Dckt 48];  
Order granting filed 8/31/19 [Dckt 52]

[RAC-1] Application for Authorization to Employ Blakeley LLP as Counsel to Chapter 11 Trustee David  
Sousa filed 9/10.19 [Dckt 55]; Order granting filed 9/11/19 [Dckt 60]

Chapter 11 Trustee's Second Interim Report filed 9/27/19 [Dckt 65]

[DCJ-1] Motion for Determination of Reasonableness of Fees filed 9/30/19 [Dckt 67]

[UST-2] Order granting Motion for Review of Fees filed 10/8/19 [Dckt 77]

**The Status Conference is continued to 2:00 p.m. on xxxxx, 2020.**

#### **NOVEMBER 7, 2019 STATUS CONFERENCE**

On September 27, 2019 the Chapter 11 Trustee filed a "Second Interim Report." Dckt. 65. At that point in the time, the Trustee was continuing the operation of the Bankruptcy Estate's one remaining restaurant. The Trustee has inspected the Debtor's former restaurant locations, and found all personal property assets removed from those locations. The Trustee states that the Debtor advises him that the landlord of the Stockton location sold the Debtor's assets and is keeping the sales proceeds. Further, Debtor alleges that said landlord has breached an agreement whereby the Bankruptcy Estate has the right to received \$140,000 from the sublease of the Stockton location.

On October 23, 2019, the Trustee filed the September 2019 Monthly Operating Report. Dckt. 82. This reflects that during the first seven months of the case, the Bankruptcy Estate generated \$264,437 gross sales and reports a gross profit of \$172,397. Dckt. 82 at 2. After expenses, it is reported that the Bankruptcy Estate a slight loss of (\$3,927) during this seven months of operation.

At the Status Conference, xxxxxxxxxx

#### **AUGUST 1, 2019 STATUS CONFERENCE**

The court having ordered the appointment of a Chapter 11 Trustee, the Status Conference is continued.

## **JUNE 27, 2019 STATUS CONFERENCE**

A review of the file reflects that no pleadings have been filed in this case by the ΔIP since its March 16, 2018 Status Report. At the March 28, 2019 Status Conference it was stated that the Debtor or the ΔIP would file a Chapter 11 plan and disclosure statement by June 25, 2019. Neither has been filed by that date.

There are five proofs of claims that have been filed. The largest is for unpaid sales taxes to the State of California.

The ΔIP has not filed monthly operating reports for:

March 2019,  
April 2019,  
May 2019, and  
June 2019.

Debtor's prior Chapter 11 case was filed on March 26, 2018, and dismissed on December 6, 2018. During eight months of that case, seven monthly operating reports were to be filed by the ΔIP in that case (which is also serving as the ΔIP in this case). No monthly operating reports were filed in the prior Chapter 11 case.

The ΔIP in this case and in the prior Chapter 11 case have been represented by experienced Chapter 11 counsel. There can be no doubt that the ΔIP is aware of its obligation to file monthly operating reports.

In the prior case, the ΔIP sought to blame the Chapter 11 counsel for the failure to file monthly operating reports,

Debtor in Possession filed a Response in Opposition on November 29, 2018. Dckt.56. Debtor in Possession's counsel states that Debtor in Possession has relied on counsel to convert franchise-dictated monthly operated reports for Debtor in Possession's Dickey's Barbeque Pit businesses to the format of monthly operating reports required by the court. Debtor in Possession's counsel states further that he has been prevented from producing the monthly operating reports due to several unexpected hardships, including health issues and injuries of numerous family members.

Debtor in Possession argues 11 U.S.C. § 1112(b)(2) applies to this situation because the defect can be cured within a short period of time, the Debtor in Possession was diligent in providing franchise-dictated monthly operated reports to its attorney, and there are reasons the attorney was unable to prepare the monthly operating reports.

18-90196; Civil Minutes, Dckt. 60.

Where an attorney seeks to "fall on his sword" as the excuse for a client failing to fulfill their obligations in a bankruptcy case is a very slippery slope. In substance, such "excuse" can be viewed as admission by the attorney who has a fiduciary duty to the bankruptcy estate.

The court gave the Debtor and counsel for the ΔIP in the prior case the benefit of the doubt and elected to dismiss the prior case rather than convert it to one under Chapter 7 or appoint a Chapter 11 trustee. *Id.*; at 3.

Unfortunately, though given the benefit of the doubt and a second chance by the court, the ΔIP is demonstrating that it has no intention of fulfilling its obligations under the Bankruptcy Code.

The failure to file monthly operating reports is a basis for the appointment of a Chapter 11 trustee or conversion of this case to one under Chapter 7.

At the Status Conference, the Debtor in Possession did not offer any reason for being unable to file Monthly Operating Reports.

Counsel for the Debtor in Possession reported that there was a disagreement among the owners over whether the case should be dismissed or a plan be prosecuted.

In light of the failure of the Debtor in Possession to fulfill its obligations, the court shall issue an order to show cause why the case should not be converted to one under Chapter 7.

### **MARCH 28, 2019 STATUS CONFERENCE**

This voluntary Chapter 11 bankruptcy case was filed by Barreno Enterprises, LLC on February 25, 2019. Debtor's prior voluntary Chapter 11 case was filed on March 26, 2018, and dismissed on December 6, 2018. 18-90196.

In this case Barreno Enterprises, LLC, the Debtor, and not the debtor in possession, filed a Status Report. Dckt. 15. Debtor reports operating one Dickey's Barbeque Pit franchise, having closed five other locations.

Debtor states that it, and not the debtor in possession, intends to file a Chapter 11 plan by June 25, 2019. The Debtor notes that as of the March 16, 2019 filing of the Status Report only one proof of claim had been filed, that for \$325.00 by the U.S. Trustee.

On Schedule A/B Debtor lists having significant assets consisting of: (1) \$4,000 in cash and banking deposits; (2) \$4,500 in food and inventory; (3) \$16,000 in machinery and equipment; and (4) a franchise worth \$75,000. Dckt. 14.

On Schedule D Debtor lists creditors having secured claims which total (\$36,000). *Id.* at 11-12. On Schedule E/F Debtor lists \$96,000 in priority claims and \$1,559,000 in general unsecured claims. *Id.* at 13-18.

At the Status Conference counsel for the Debtor in Possession reported that the Schedules have been filed. At the one remaining location the revenues are up approximately twenty percent.