

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**January 27, 2022 at 2:00 p.m.**

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1. [94-92001-E-7](#)      **STEVEN FORD**  
[21-9009](#)      **CAE-1**  
**FORD V. SIMMONS ET AL**

**CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-21-21 [1]**

Plaintiff's Atty: David C. Johnston

Defendant's Atty: unknown

Adv. Filed: 9/21/21

Answer: none

Nature of Action:

Dischargeability - other

Injunctive relief - other

Notes:

Continued from 12/2/21 to allow Plaintiff-Debtor the opportunity to prosecute motions for entry of default judgments.

[DCJ-1] Plaintiff's Motion for Default Judgment filed 12/30/21 [Dckt 17]; set for hearing 1/27/22 at 10:30 a.m.

<b>The Status Conference is continued to <span style="color: red;">XXXXXXX</span></b>
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**JANUARY 27, 2022 STATUS CONFERENCE**

Through this Adversary Proceeding the Plaintiff-Debtor seeks a determination that post-discharge renewals of a State Court Judgment by Defendants are void, and to enforce the discharge injunction and statutory injunction relating thereto.

At the Status Conference, XXXXXXX

**January 27, 2022 at 2:00 p.m.**

**- Page 1 of 20 -**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. No Certificate of Service was filed with the court.

At the hearing all parties in interest appeared, documenting that service had been made.

The Motion to Revoke Discharge of Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Revoke Discharge is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span></b>
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KROLOFF, BELCHER, SMART, PERRY & CHRISTOPHERSON, a Professional Law Corporation, creditor with an unsecured claim in the amount of \$81,393.27 ("Objector"), filed the instant Motion to Revoke Debtor's Discharge on June 11, 2021.

The instant case was filed under Chapter 7 on February 11, 2020. Debtor received a discharge on June 11, 2020. Dckt. 15. Objector argues that Ali Saeed Muthana ("Debtor") is not entitled to a discharge in the instant bankruptcy case for the following reasons:

1. the discharge was obtained through the fraud of the debtor and Kroloff did not know of such fraud until after the granting of such discharge, pursuant to U.S.C. § 727(d)(1); and
2. Debtor acquired property that is property of the estate or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition or entitlement to such property, or to deliver or surrender such property to the trustee, pursuant to 11 U.S.C. § 727(d)(2).

## DISCUSSION

The revocation of a discharge is governed by 11 U.S.C. § 727(d), which Bankruptcy Code section provides in part,

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee[.]

11 U.S.C. § 727(d). The standard for a determination of fraud that would allow for revocation of a discharge is a heightened standard. As explained in Collier on Bankruptcy,

Section 727(d)(1) provides that, if the other requisites are present, the court may revoke the discharge if it “was obtained through the fraud of the debtor.” This language requires, at a minimum, that the discharge would not have been granted but for the fraud alleged. The fraud required to be shown is fraud in fact, such as the intentional omission of assets from the debtor’s schedules. The fraud required to be shown must involve intentional wrong, and does not include implied fraud or fraud in law, which may exist without the imputation of bad faith or immorality.<sup>6</sup>

6 Collier on Bankruptcy P 727.17 (16th 2021).

Here, partners at a law firm that represented the Debtor pre-petition, testify that they read, meaning “heard someone else say,” that Debtor had won the lottery, that he won \$5 million, and thus the money exists and must have gone somewhere. The witnesses do not testify that they have personal knowledge of such winnings, but only that they heard someone else say in newspaper articles, and then it being reference in a pleading filed in a state court action. <sup>FN.1.</sup>

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FN. 1. Federal Rules of Evidence 601 et seq., requiring that a witness have personal knowledge of the fact as to which that person testifies under penalty of perjury, and not merely knows that someone else states that they know.  
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Creditor argues that Debtor engaged in fraud because not only did Debtor did not disclose the lottery winning of \$5 million four year prior to the filing but also Debtor must own additional liquid assets or other property purchased with those lottery winnings that were not disclosed in the bankruptcy petition.

First, what the Objector presents as evidence is hearsay. The information provided by creditors are details obtained from newspaper articles. With one exception, no evidence is presented by this sophisticated party, a law firm, that is anything other than the reference to newspapers where Objector had at its disposal the tools of Discovery.

The one exception is Exhibit E, a Motion *in Limine* filed by an attorney for Debtor in a state court action, in which the attorney for Debtor states:

This has particular relevance to this action in that one cross-defendant ALI MUTHANA was fortunate enough to be the recipient of a portion of California Lottery winnings during the pendency of this action.

Exhibit E, Motion *in Limine*, p.2:8-9; Dckt. 49. This Motion has a filed date in the upper right hand corner of September 30, 2016. That is four years before Debtor commenced this Chapter 7 bankruptcy case.

Objector presents no evidence from the California Lottery as to what Debtor won or how much he received. Objector does not mention subpoenas for bank records of the Debtor, given that the check or checks would have to be deposited and the funds therefrom traceable. Objector themselves represent that in doing research as to whether other assets were held, Objector appears to have only come across the lottery prize. Objector does not allude to any other assets and it may be that there aren't any than those listed on Debtor's Schedules.

#### Debtor's Response

The court then has Debtor testifying that he had won "only \$1,160,001.99" and not the \$5 million as argued by the Objector. Debtor has presented the court with evidence that a net payment amount of \$1,160,001.99 was paid to Debtor, Debtor made an additional tax payment of \$100,000.00, and that the amount paid to Debtor was deposited at a Wells Fargo account. Declaration, Dckt. 54, see also Exhibits 1 and 2, Dckt. 53.

In essence, the basis of the Objection is that Debtor won some money five years before the bankruptcy case was filed, there obviously must be assets somewhere relating thereto that could be used to pay Debtor's creditors, and therefore the Debtor's discharge should be revoked on this supposition.

The court cannot revoke and then deny a debtor his discharge where what is presented is speculative based on newspapers with a simple reason that since Debtor won the lottery the money must be or must have gone somewhere. Actual evidence is required.

Creditor is sophisticated in the law. There are many tools available to conduct discovery, whether within the contested matter through the Federal Rules of Civil Procedure (Fed. R. Civ. P. 28-37, Fed. R. Bankr. P. 7028-7037, 9014(c)) or through Federal Rule of Bankruptcy Procedure 2004. Creditor has had these tools, obviously (as attorneys) are aware of these tools, and presumably used them to the extent possible to present evidence to carry Creditor's burden of proof.

In his Declaration, attorney Kerry Krueger, a shareholder of Creditor, testifies that he personally started representing the Debtor in 2016. Then, in 2019 represented Debtor in another matter. Mr. Krueger then testifies that when Debtor obtained his discharge (which was June 11, 2020), "I did not know that Debtor had recently won \$5 million in the California Lottery . . . ." Declaration, ¶ 4; Dckt. 50. The winning

is alleged to have occurred five years earlier, which may be “recent” in some respects, and five long, financially crushing years in others.

While admitting in the Declaration that he was aware, apparently in 2019, that Debtor had some lottery winnings, he assumed that they were only a couple thousand dollars. It was after subsequently learning that it was higher, he had a paralegal engage in on-line research to find articles about the winnings.

In the Motion, Creditor repeatedly makes reference to the news articles making reference to the Debtor splitting a \$10,000,000 lottery winning, so therefore Debtor received \$5,000,000. The copy of the Lottery payment to Debtor provided as Exhibit 1, Dckt. 53, includes the following information:

- a. “LOTTERY TOTAL PRIZE AMOUNT.....\$1,546,666.66”
- b. “INITIAL GROSS PAYMENT AMOUNT....\$1,546,666.66”
- c. “INITIAL FEDERAL TAX WITHHELD.....\$1,160,001.99”

(emphasis in original). Thus, the amount paid to Debtor, based on evidence presented, was \$1,160,000.99. The court takes judicial notice, it commonly being known in the jurisdiction, that the large lottery prizes are stated in the dollar amount of the total payments made over a 30 year period. The winner has the option to elect to take a present value discounted lump sum cash payment in place of the 30 year “annuity.”

The California Lottery maintains its official State website at <https://www.calottery.com/>. At that webpage examples of the 30 year payout and the discounted cash value are provided, with examples including:

PowerBall \$274,000,000 prize, with estimated cash value of \$197,700,000 (28% discount)

SuperLotto Plus \$9,000,000 prize, with estimated cash value of \$6,400,000 (28.8% discount)

Mega Millions \$265,000,000 prize, with estimated cash value of \$185,600 (30% discount)

It would not be surprising to see a Lottery winner take the lump sum cash payment.

While theorizing that assets must exist and while contending that something else must be disclosed, at the end of the day, creditor merely presents the court with conjecture, speculation, hearsay, and circumstantial, “it has to be,” evidence. Creditor has not provided the court with creditor, personal knowledge evidence of the winnings, has not presented the court with bank records, has not presented with Lottery records, and not presented the court with evidence of there being Lottery winnings hidden away by the Debtor five years after the Debtor won the money.

On Schedule I, Debtor lists his employment as that of a cashier, and having been that for the six years preceding the bankruptcy filing, and as of the February 11, 2020 filing of the bankruptcy case, having gross monthly earnings of \$3,000. Dckt. 1 at 29-30. After taxes and withholdings, Debtor states his take home pay is \$2,870.25. *Id.* On Schedule J, Debtor lists a spouse (for whom no income is shown) and two children, who were minors during the five years preceding the filing of the bankruptcy case. *Id.* at 31-32. The expenses listed on Schedule J, for which Debtor states his expenses exceed income by (\$1,329.75) a month are meager for a family of two adults and two teenage sons.

On the Statement of Financial Affairs Debtor states having wages of \$18,000 in 2019 and \$16,500 in 2018. *Id.* at 38.

If Debtor had \$1,000,000 in 2015 and “lived like a millionaire” while making cashier wages as shown on the Statement of Financial Affairs., for 2015, 2016, 2017, 2018, and 2019, the \$1,000,000 would represent “only” \$200,000 a year. Monthly, that breaks down to \$16,666.66 a month. Large when compared to \$3,000 or less a month as a cashier, but not never-ending deep money.

Looking at Schedules D and E/F, Debtor doesn’t have much in claims, other than Creditor for the legal fees and (\$625,000) for being on the wrong end of a judgment. *Id.* at 19-24. That judgment creditor, identified as Maiyesa Basidiq, who is identified as the defendant in a San Joaquin County Superior Court Action, a 2014 case. Creditor’s attorneys were brought into that case in 2019 to represent Debtor when his prior counsel passed away for the trial and post-trial motions.

### **August 19, 2021 Hearing**

At the hearing, counsel for the Trustee reported that the Trustee is actively investigating the lottery winning proceeds and the transfer of such monies by the Debtor. Counsel for Objecting Creditor discussed with the court the need to proceed with discovery and the diligent prosecution of this Motion.

In light of the ongoing investigation by the Chapter 7 Trustee and the issues raised, the court continues the hearing to allow for the diligent prosecution of this Motion. <sup>FN.2.</sup>

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FN. 2. Though not currently shown by Creditor, if Debtor has hidden lottery winnings, the Chapter 7 Trustee and others using the discovery tools available should be able to ferret out where such monies are. And if so, revocation of the Debtor’s discharge would be the least of Debtor’s worries, and he would then likely need to engage the service of defense counsel as this matter would be elevated to the United States District Court and the United States Attorney.  
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### **October 13, 2021 Trustee Status Report**

The Trustee filed a Discovery Update Status Report on October 13, 2021, Dckt. 59. The report states the Trustee obtained an order under Rule 2004 authorizing a subpoena for documents to California Lottery. California Lottery responded and provided documents confirming Debtor won an award in September 2015 of \$1,160,000.00 and was paid on November 17, 2015.

The Trustee obtained an order under Rule 2004 authorizing the examination of Ali Muthana and production of documents. Mr. Muthana produced bank statements and other documents. The bank statements showed Mr. Muthana deposited the winnings into a Wells Fargo Bank account, a portion was used to buy real property located at 2222 Whitefall Court, Ceres California. The remainder was withdrawn in installments during the following 2-3 months, the Trustee is unable to trace the funds following withdrawal.

The Debtor testified he obtained a loan against the Whitefall Court property in May 2019 for approximately \$237,000.00. The Trustee cannot trace the funds beyond these withdrawals. Further, Debtor

transferred the Whitefall Court property during the Chapter 7 bankruptcy case for no consideration to his stepson, Bader A. Suwaid. The Debtor purportedly refinanced the existing loan on the property with a new loan from GNN Real Estate & Mortgage, Inc.

Additionally, Trustee has obtained orders authorizing the examination of Basma Muthana and three entities purportedly owned by Ms. Muthana. Trustee has been unable to serve Ms. Muthana because she has been reportedly out of the country per Debtor's testimony.

Lastly, Trustee commenced Adversary Proceeding No. 21-9008 against Mr. Suwaid and GNN Real Estate and Mortgage, Inc. on July 26, 2021, seeking to avoid the post-petition transfer of the Whitefall property. The court continued the status conference to December 2, 2021 to enable one of the Defendant's counsel to recover from COVID-19. No discovery has been conducted.

### **October 14, 2021 Creditor Status Report**

Creditor Kroloff, Blecher, Smart, Perry & Christopherson, a Professional Law Corporation, filed a Discovery Update Status Report on October 14, 2021, Dckt. 62. The Creditor states the prize awarded to the Debtor was less than previously thought by the Creditor, but still a significant sum. This was evidence through the 2004 documents California Lottery turned over.

Creditor has examined the Bank Statements the Debtor has turned over and are interested in the November and December 2015 bank statements. The Creditor indicates that large amount withdrawals were made by the Debtor in the month of December. Creditor indicates that the Debtor's bank account balance went from \$1,160,000.00 on December 1, 2015 to \$7,469.00 by December 28, 2015. When asked about this Debtor cannot remember what the money went to. He testified it went to purchasing a home and gambling.

Creditor and counsel for the Trustee have communicated regarding the Trustee attempting to obtain documents relating to the Debtor's daughter, Basma Muthana and the three entities purported to be owned by her. Creditor has learned Trustee is in the process of obtaining records from the bank for the Debtor's large withdrawals to determine if they were made via wire transfer, cash, or cashier's check. Trustee will also seek to obtain financial records from Ms. Muthana regarding her businesses and whether the withdrawals by Debtor have any relation to an ownership stake in said businesses.

The information the Creditor needs to prove their argument for the Motion to Revoke Discharge is the same information the Trustee is attempting to obtain. Creditor indicates it would be a waste of time and resources to subject the Debtor and Ms. Muthana to the same examinations under a separate Rule 2004 order. Further, Creditor would have the same challenges in serving Ms. Muthana as the Trustee.

### **Bank Statement Exhibits**

The Trustee has provided a copy of a June 27, 2019 Wells Fargo Bank statement for Debtor's account. Dckt. 60. The transactions for that one month include:

Electronic Deposit, 5/29/2019.....	\$236,895
Withdrawal Made in A Branch/Store, 5/31/2019.....	(\$20,000)
Withdrawal Made in A Branch/Store, 5/31/2019.....	(\$20,030)
Withdrawal Made in A Branch/Store, 5/31/2019.....	(\$50,000)

Withdrawal Made in A Branch/Store, 5/31/2019.....(\$56,000)  
Withdrawal Made in A Branch/Store, 5/31/2019.....(\$90,090)

The Trustee's Status Report does not indicate the status of obtaining the documentation from Wells Fargo Bank of how the withdrawals were documented (cashier's check, money order, electronic transfer) and tracing of those funds. While stating that the Trustee is "unable to trace the funds," it does not indicate this withdrawal documentation and where checks or electronically transferred funds were negotiated. There is no indication in the Status Report that Wells Fargo Bank handed Debtor suitcases of cash for the \$236,000 withdrawals made in one day.

Creditor has provided a copy of a December 28, 2015 Wells Fargo Bank Statement for Debtor and Bader A Kassim Suwaid. Dckt. 63. The beginning balance on December 1, 2015, is \$1,160,763. For the month of December 2015, the withdrawals and deposits include:

12/9/2015	Edeposit.....	\$ 49,000
12/9/2015	Purchase Bank Check or Draft.....	(\$ 44,173.87)
12/11/2015	Withdrawal Made in Branch/Store.....	(\$ 8,000)
12/11/2015	Purchase Bank Check or Draft.....	(\$104,506.29)
12/11/2015	Purchase Bank Check or Draft.....	(\$747,824.04)
12/15/2015	Withdrawal Made in Branch/Store.....	(\$ 10,000)
12/16/2015	Withdrawal Made in Branch/Store.....	(\$ 17,500)
12/18/2015	Edeposit.....	\$ 4,000
12/21/2015	Purchase Bank Check or Draft.....	(\$265,000)

The Creditor's Status Report does not indicate the status of obtaining the documentation from Wells Fargo Bank of how the withdrawals were documented (cashier's check, money order, electronic transfer) and tracing of those funds.

### **October 21, 2021 Hearing**

At the hearing, the Movant and the Chapter 7 Trustee addressed with the court ongoing discovery relating to this Contested Matter, an Adversary Proceeding the Chapter 7 Trustee is prosecuting, and general discovery relating to the now identified withdrawals of more than \$1,300,000 by Debtor, many of which have been identified as having been by bank check or draft.

The court continues the hearing allowing the parties to conduct discovery in this Contested Matter. Fed. R. Bankr. P. 9014(c), incorporation of discovery rules from the Federal Rule of Civil Procedure into contested matter practice.

### **January 27, 2022 Hearing**

The court's review of the Docket discussed that nothing new has been filed by the Parties to this Contested Matter.

In the Trustee's Adversary Proceeding against Suwaid and GNN Real Estate and Mortgage, Inc. (21-9008) the court has issued a Scheduling Order, with the pre-trial conference set for November 10, 2022.

At the Hearing, **XXXXXXXXXX**



The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Revoke Discharge filed by Kroloff, Belcher, Smart, Perry & Christopherson, a Professional Law Corporation, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Revoke Discharge is ~~XXXXXXXXXXXXX~~

3. 18-90029-E-11      **JEFFERY ARAMBEL**      **CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-17-18 [1]**

Debtor's Atty: Pro Se

Notes:

Continued from 9/30/21

Post-Confirmation Report Filed: 10/21/21

[FWP-19] Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation With SBN V AG I LLC filed 10/14/21 [Dckt 1554]; Order granting filed 11/4/21 [Dckt 1578]

[HSM-3] Substitution of Attorney for Benjamin Lopez filed 11/9/21 [Dckt 1579]; Order granting filed 11/10/21 [Dckt 1581]

[FWP-14] Plan Administrator's *Ex Parte* Application to Amend Order Granting Motion to Transfer the Filbin/Stadtler Ranch to Secured Creditors in Lieu of Foreclosure filed 1/6/22 [Dckt 1606]; Amended Order filed 1/10/22 [Dckt 1610]

[FWP-21] Plan Administrator's Motion for Entry of Order Approving Use of Cash Collateral Pursuant to Stipulation With SBN V AG I LLC filed 1/13/21 [Dckt 1617], set for hearing 1/27/22 at 10:30 a.m.

[FWP-13] Order continuing hearing on Motion to Abandon filed 1/14/22 [Dckt 1628], set for hearing 2/17/22 at 10:30 a.m.

[FWP-14] Plan Administrator's Second *Ex Parte* Application to Amend Order Granting Motion to Transfer the Filbin/Stadtler Ranch to Secured Creditors In Lieu of Foreclosure filed 1/19/22 [Dckt 1631]

**JANUARY 27, 2022 STATUS CONFERENCE**

Focus Management Group USA, Inc., the Plan Administrator, filed a Post-Confirmation Report on January 21, 2022. Dckt. 1636. It is signed by Jason E. Rios, identified as the Responsible Party, and not the Plan Administrator. The attached Summary of Post-Confirmation Transfers is signed by the Plan Administrator. The tables on pages 9 and 10 of the Report are not readable, with the type blurred out as would be seen on a malfunctioning TV “back in the old days.”

At the Status Conference, **XXXXXXX**

4. [20-90349-E-11](#)      **R. MILLENNIUM TRANSPORT, INC.**      **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION**  
**5-15-20 [1]**

#### **SUBCHAPTER V**

Debtor’s Atty: David C. Johnston

Notes:

Continued from 9/30/21

#### **JANUARY 27, 2022 STATUS CONFERENCE**

On January 26, 2022, the Debtor/Plan Administrator filed an Objection to Proof of Claim 2-1 filed by Gina Windorski. Dckt. 151. The hearing on the Objection to Claim is set for March 24, 2022.

At the Status Conference, **XXXXXXX**

#### **SEPTEMBER 30, 2021 STATUS CONFERENCE**

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period late September 2021 through late November 2021.

At the Status Conference, the Subchapter V Trustee reported that plan payments have been made by Debtor and disbursements on secured claims. No disbursements have been made to unsecured claims. Debtor has obtained a judgment against two creditors.

Also, the claim for several leases relating to the Fresno Truck Center was filed after the Plan was confirmed. Debtor asserts that the Plan allows that.

#### **APRIL 29, 2021 STATUS CONFERENCE**

The court Order confirming the Subchapter V Plan in this case was entered on February 11, 2021. Dckt. 133. No post-confirmation status report was filed by the Debtor who administering the confirmed plan.

At the Status Conference, counsel for the Debtor reported that they are working on the mechanics on making the payments under the Plan since not all classes affirmatively voted to accept the Plan.

The Trustee noted that while the Plan does not provide for the Trustee to make the payment, under operation of Subchapter V the Trustee will do so, except for the direct electronic payments already being made pursuant to prior adequate protection orders.

5. [20-90779-E-11](#) **PRIMO FARMS, LLC**  
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
12-3-20 [1]**

#### **SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

Continued from 12/2/21 to allow the Debtor/Plan Administrator, counsel for the Debtor/Plan Administrator, the Subchapter V Trustee, and the U.S. Trustee to consider and take such actions as appropriate to address what has transpired in this case before the court makes any formal referrals relating thereto.

Subchapter V Trustee's 1st Status Report filed 1/18/22 [Dckt 101]

#### **JANUARY 27, 2022 STATUS CONFERENCE**

On January 18, 2022, Walter R. Dahl, Esq., the Subchapter V Trustee, filed a Status Report. He does not recommend conversion or the dismissal of the Bankruptcy Case at this time. The Trustee intends to pursue an investigation of matters, including the demands for default interest made in contravention of the confirmed Plan, and the actions of the two principals purporting to dissolve the Debtor during this case and then forming a new limited liability company with the same name.

On January 24, 2022, a Declaration of Neftali Alberto, the managing member of the Debtor, was filed. Dckt. 103. Mr. Alberto's testimony includes a statement that the other member, Mark McManis filed a document with the Secretary of State, a Certificate of Cancellation, in which it inaccurately stated that all members of the Debtor had voted to dissolve.

He testifies that he was unaware of this until Mid-July 2021, when he learned of the purported dissolution when he was trying to close the sales as required under the Plan. Mr. Alberto, the responsible representative for the Debtor/Plan Administrator, states that he took the legal advice of an escrow office to just set up a new limited liability company with the same name so they could close escrow.

He also provides testimony that Lending Home placed a demand in escrow for the sale of the Sycamore Avenue Property, with a demand for "default rate interest" rather than the 7% provided under the confirmed plan. He also provides some testimony about unknown liens for unknown debts, dating back to when Mark McManis was the managing member.

At the Status Conference, **XXXXXXX**

## **DECEMBER 2, 2021 STATUS CONFERENCE**

The Debtor/Plan Administrator filed a Status Report on November 26, 2021. Dckt. 94. The Debtor/Plan Administrator reports that the Confirmed Plan provided for the sale of three houses by July 31, 2021, after which date the creditor with the secured claim(s) could foreclose.

Unfortunately, the sales escrows were delayed to numerous issues, and the lenders have foreclosed on all three homes. The Debtor/Plan Administrator identifies several of these issues as:

- A. A dissolution of the Debtor, without the consent of the managing member, that occurred on May 28, 2021.

It is unclear to the court how a Debtor, in a bankruptcy case, can be “dissolved,” as well as how such “dissolved” Debtor could purport to continue to serve as a plan administrator and a party in these federal court proceedings.

The Plan in this case was confirmed by an order entered on June 10, 2021. Dckt. 76.

- B. That the lenders submitted payoff demands into escrow that violated/breached the terms of the confirmed plan. This violation/breach is stated to be making demands for default interest, which was not the interest provided in the Plan that bound these lenders and the Debtor/Plan Administrator.

The Status Report does not identify what action the Debtor/Plan Administrator took to enforce the Plan or intends to take with respect to the breach of the Plan.

At the Status Conference, counsel for the Debtor/Plan Administrator could not identify any steps taken by the Debtor/Plan Administrator to enforce the Confirmed Plan or rights relating to the alleged breach of the Confirmed Plan.

- C. That when the title companies ran the preliminary title reports there were junior liens on the homes, which if paid, would consumer all of the proceeds, leaving nothing for the Plan.

The Status Report does not identify these persons who were owed debts secured by the homes (property of the bankruptcy estate and subject to the plan) and what such debts (secured claims) were. It also does not state how such creditors with secured claims were unknown to the Debtor/Debtor in Possession and not included in the Plan.

At the Status Conference, counsel for the Debtor/Plan Administrator identified the creditors alleged to have breached the plan, but did not identify who were the purchasers of the properties from the foreclosing creditors.

The Debtor/Plan Administrator suggests in the Status Report that the Status Conference to continued in light of the Debtor/Plan Administrator having lost all of the property that was part of the

Bankruptcy Estate and became property under the Confirmed Plan, so that Debtor/Plan Administrator can file a motion to dismiss this case.

In looking at the California Secretary of State's website, she report that Primo Farms, LLC, which was registered September 19, 2013, was "Cancelled." The documents provided on the Secretary of State's Website include the following:

- A. Cancellation Statement is signed by Mark McManis, which has a file date of May 27, 2021.
  - 1. It states that the cancellation was made by a vote of "ALL" of the members of Primo Farms, LLC.
  - 2. It states that upon the effective date of the Certificate of Cancellation, Primo Farms, LLC's "registration is cancelled and **its powers, rights and privileges will cease in California.**"
- B. Statement of Information filed on April 27, 2020, for Primo Farms, LLC states that the manager is "neftali alberto," who is located at 2405 Kansas Ave, Modesto, California. It also identifies the agent for service of process as being Mark McManis, located at 9634 Cabernet Court, Patterson, California. Mr. McManis is not identified as a managing member of the LLC. The Statement of Information is signed by Mark McManis, whose title is "agent," and not by "neftali alberto," the managing member.

The Secretary of State reports that another entity named Primo Farms, LLC was registered on July 15, 2021. The LLC Registration - Articles of Organization filed on July 15, 2021, identifies a Neftali J. Alberto, located at 2405 Kansas Avenue, Modesto California as the sole managing member and the agent for service of process. Consistent information is provided on the Statement of Information for the new Primo Farms, LLC filed on July 20, 2021. <sup>FN.1.</sup>

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FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=primo+farms&SearchSubType=Keyword>

The court does not reference the Secretary of State Official Website information and documents as "evidence" being submitted to the court, but to provide such publically available information in connection with the discussion at the Status Conference.

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The Chapter 11 Petition is signed by Neftali Alberto, as the managing member of Debtor. Dckt. 1 at 4. Mr. Alberto signed the Statement Regarding Authority to Sign and File Petition and Resolution of the Members of Primo Farms, LLC to file the bankruptcy case. *Id.* at 5, 6.

On the Statement of Financial Affairs, the sole managing member of Debtor identified as Neftali Alberto, who has a 50% interest. The other member, but not a managing member, is identified as Mark McManis, who has a 50% interest. Stmt. Fin. Affairs, Question 28; Dckt. 22 at 7.

In the Status Report, it states that the Debtor/Plan Administrator was dissolved without the consent of the 50% managing member, Mr. Alberto. That would mean that Mr. McManis, who held 50% of the member interests in the Debtor forced the immediate dissolution of the Debtor/Plan Administrator – with the fiduciary Debtor/Plan Administrator helpless to protect the assets to be used in the Plan to pay creditors. See Cal. Corp. Code § 17707.01(b) providing that dissolution of an LLC can be done by a vote of 50% or more of the membership.

If the Debtor/Plan Administrator was dissolved by the act of Mark McManis in May 27, 2021, then that may well have left the fiduciary Debtor/Plan Administrator neutered and unable to fulfill its, and its members', fiduciary duties arising under Federal Law and the Confirmed Chapter 13 Plan (which confirmation order was entered on June 10, 2021, after the Debtor/Plan Administrator is stated to have been dissolved.<sup>FN.2.</sup>

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FN. 2. Since the member chose to dissolve the Debtor/Debtor in Possession prior to confirmation, then such attempt may have been in violation of the stay and void.  
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Additionally, failing to disclose that the Debtor/Debtor in Possession had been dissolved before the court entered the order confirming the Plan, which rendered the information provided to the court upon which confirmation was based to be incorrect.

While California Corporations Code § 17707.06 allows a dissolve limited liability to prosecute actions by or against it in order to collect and discharge obligation, disposing of and conveying its property, and collecting and dividing its assets, here it was serving as the fiduciary plan administrator. Additionally, by being “dissolved,” rather than an active, operating entity, it may not have had the assets or ability to perform its fiduciary duties.

As is clear from the context of the court’s comments above, this situation where creditors are stated to have violated the Plan, the Debtor/Plan Administrator having been purportedly “dissolved” out from under this federal court, the “dissolved” Debtor/Plan Administrator purporting to be the plan administrator and continuing to appear in this case, no action taken to address breaches of the Plan by creditors, and there being undisclosed creditors with secured claims, a swift dismissal of this case may be premature. It may be that the Subchapter V Trustee, reporting these events to the U.S. Trustee, may necessitate the U.S. Trustee investigating what has occurred.

At the Status Conference, counsel for the Debtor/Plan Administrator could not present the court with any action that the Debtor/Plan Administrator had taken to enforce the Confirmed Plan or enforce any rights relating to breaches of the Plan terms and the purported dissolution of the Debtor while it was in the Chapter 11 case and the automatic stay was in full pre-confirmation force and effect.

# FINAL RULINGS

6. [21-90484-E-11](#)      **TWISTED OAK WINERY, LLC**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **VOLUNTARY PETITION**  
10-4-21 [1]

## SUBCHAPTER V

**Final Ruling:** No appearance at the January 27, 2022 Status Conference is required.

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Debtor's Atty: Brian S. Haddix

Notes:

Continued from 12/2/21

Operating Reports Filed: 1/13/22, 1/17/22

[12/8/21] Trustee Report at 341 Meeting lodged with the court

[12/16/21] U.S. Trustee Report at 341 Meeting lodged with the court

[BSH-4] Debtor's Motion to Approve Stipulation for Use of Cash Collateral with the U.S. Small Business Administration filed 1/13/22 [Dckt 51], set for hearing 1/27/22 at 10:30 a.m.

First Amended Plan of Reorganization for Small Business Under Chapter 11 filed 1/17/22 [Dckt 57]

Second Amended Plan of Reorganization for Small Business Under Chapter 11 filed 1/19/22 [Dckt 59]

**The Status Conference is continued to 2:00 p.m. on March 24, 2022, to be conducted in conjunction with the Subchapter V Plan Confirmation Hearing.**

## JANUARY 27, 2022 STATUS CONFERENCE

The court has issued an Amended Order (Dckt. 61), the amendment necessary in light of counsel for the Debtor/Debtor in Possession noting a typographical error concerning a date, setting the confirmation hearing in the Subchapter V case for March 24, 2022.

No status reports or other pleadings have been filed indicating any issues to be addressed at the January 2022 Status Conference. The court continues the Status Conference to 2:00 p.m. on March 24, 2022, to be conducted in conjunction with the Confirmation Hearing.

## DECEMBER 2, 2021 STATUS CONFERENCE

On November 18, 2021, Twisted Oak Winery, LLC, the Debtor/Debtor in Possession, filed a Status Report. Dckt. 39. The information reported includes the following. The Debtor/Debtor in Possession is current on lease payment, the SBA insured loan, payroll, and tax obligations. The Debtor/Debtor in Possession foresees the Plan in this case providing for a 100% dividend for creditors holding general unsecured claims. It is projected that the Chapter 11 Plan will be filed by January 4, 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that an agreement has achieved a cash collateral stipulation. There will be amendments to the Schedules, which do not impact the plan.

Counsel for the U.S. Trustee believes that in the past that the principal's credit card was used for business expenses and need to be continued.

7. <a href="#"><u>18-90090-E-7</u></a> <b>CLIFFORD BARBERA</b> <a href="#"><u>18-9010</u></a> <b>BOWERS ET AL V. BARBERA</b>	<b>CONTINUED STATUS CONFERENCE RE: COMPLAINT 6-11-18 [1]</b>
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**Final Ruling:** No appearance at the January 27, 2022 Status Conference is required.

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Plaintiff's Atty: Bryan Silverman  
Defendant's Atty: Pro Se

Adv. Filed: 6/11/18  
Answer: 7/18/18

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - willful and malicious injury

Notes:  
Continued from 7/8/21. The Parties to this Adversary Proceeding are to file and serve Updated Status Report(s) as to the status of the State Court Actions and the timing of further proceedings in this court.

<b>The Status Conference is continued to 2:00 p.m. on August 4, 2022.</b>
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#### **JANUARY 27, 2022 STATUS CONFERENCE**

On July 11, 2021, this court entered an order authorizing Diana J. Cavanaugh to withdraw as counsel for Defendant Clifford Barbera. Dckt. 45.

On January 20, 2022, Plaintiff filed an Updated Status Report. Dckt. 48. Fact discovery in the State Court Action closed on December 31, 2021 in *Bowers et al. v. Priceless Kitchen & Bank, Inc., et al.*



A mandatory settlement conference is set in that State Court Action for February 23, 2022. No trial date has been set.

In the *Chekene et al. v. Bowers et al.* State Court Action,, for which a cross complaint has been filed against Defendant-Debtor, a mandatory settlement conference was held on December 15, 2021, but that Action did not settle. Fact discovery closes on February 28, 2022, and a case management conference is set for March 8, 2022, with an estimated trial date being in the Fall of 2022.

Plaintiffs request a six month continuance of the Status Conference to allow the Parties to concentrate on the State Court litigation for which the automatic stay has been modified.

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

The Parties filed their Joint Status Report on July 23, 2020. Dckt. 35. They report that the State Court Actions are still being prosecuted and they request further continuance. The parties will file an updated status report prior to the January 28, 2021 continued Conference.

#### **FEBRUARY 6, 2020 STATUS CONFERENCE**

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

One of the related actions has proceeded to arbitration in August 2019. The arbitrator has prepared, but has not yet issued the final award.

The second action, in state court, has a case management conference on February 24, 2020, but no trial date has been set.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Court having reviewed the Status Report filed by Plaintiffs, no Status Report having been filed by Defendant-Debtor, the Status Report providing updates concerning the prosecuting and scheduling in the State Court Actions for which the Automatic Stay has been modified, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on August 4, 2022.**

**IT IS FURTHER ORDERED** that the Parties to this Adversary Proceeding shall file and serve (if they file separately), on or before July 20, 2022, Updated

Status Report(s) as to the status of the State Court Actions and the timing of further proceedings in this court.

8. [17-90494-E-7](#) [18-9012](#) **DALJEET MANN**  
**EDMONDS V. MANN ET AL**

**CONTINUED POST-JUDGMENT STATUS  
CONFERENCE RE: COMPLAINT  
7-27-18 [1]**

**Final Ruling:** No appearance at the January 27, 2022 Status Conference is required.  
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Plaintiff's Atty: Steven S. Altman  
Defendant's Atty: unknown

Adv. Filed: 7/27/18  
Answer: none

Nature of Action:  
Injunctive relief - imposition of stay  
Recovery of money/property - fraudulent transfer

Notes:  
Continued from 2/11/21

Judgment filed 3/15/19 [Dckt 71]

[SSA-9] Ex Parte Request for Adversary Case to Remain Open filed 11/12/21 [Dckt 102]; Order granting filed 11/18/21 [Dckt 104]

<p><b>The Post-Judgment Status Conference is continued to 2:00 p.m. on January 12, 2023.</b></p>
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Pursuant to a Motion of the Clerk of the Court, an order has been issued (Dckt. 104) directing the Clerk of the Court to keep on this Adversary Proceeding through and including December 31, 2022. Dckt. 104. This to allow the Judgment Creditor-Trustee to proceed with effectuating settlements that would resolve the obligations owed on this Judgment.

The court continues the Status Conference to 2:00 p.m. on January 12, 2023, so it can manage this Adversary Proceeding.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Court having reviewed the Status Report filed by Judgment Creditor-Trustee Irma Edmonds, the Status Report providing updates concerning the enforcement of this Judgment and settlements relating thereto, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **2:00 p.m. on January 12, 2023**.

**IT IS FURTHER ORDERED** that the Parties to this Adversary Proceeding shall file and serve (if they file separately), on or before **December 15, 2022**, Updated Status Report(s) as to the status of the State Court Actions and the timing of further proceedings in this court.

9. [21-90409](#)-E-7      JOSHUA CATON  
[21-9011](#)      CAE-1  
MESSIER ET AL V. CATON

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-27-21 [\[1\]](#)

**ADVERSARY PROCEEDING CLOSED:**  
**1/10/2022**

**Final Ruling:** No appearance at the January 27, 2022 Status Conference is required.

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Plaintiff's Atty: Pro Se  
Defendant's Atty: Thomas P. Hogan

Adv. Filed: 9/27/21  
Answer: 10/26/21

Nature of Action:  
Recovery of money/property - preference  
Objection/revocation of discharge  
Revocation of confirmation  
Dischargeability - false pretenses, false representation  
Dischargeability- fraud as fiduciary, embezzlement, larceny

Notes:

[TCM-1] Judgment filed 12/20/21 [Dckt 32]

Judgment having been entered (Dckt. 32) and this Adversary Proceeding having been closed, <b>the Status Conference is concluded and removed from the Calendar.</b>
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