

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY: WEDNESDAY**

**DATE: FEBRUARY 27, 2019**

**CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-12737](#)-A-7    **IN RE: SONNY VASQUEZ**  
[18-1066](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
10-5-2018    [[6](#)]

DOE V. VASQUEZ  
DAVID JENKINS/ATTY. FOR PL.

**Final Ruling**

The adversary proceeding resolved, the status conference is concluded.

2. [17-10152](#)-A-7    **IN RE: CURTIS DAVIS**  
[18-1068](#)    [FW-2](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT  
1-30-2019    [[27](#)]

SALVEN V. DAVIS, JR. ET AL  
PETER SAUER/ATTY. FOR MV.

**Final Ruling**

**Motion:** Entry of Default Judgment Avoiding and Recovering a Post-Petition Transfer for the Benefit of the Bankruptcy Estate

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

The clerk has entered default against the defendants in this proceeding. Their defaults were entered because the defendants failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Valley Oak Credit Union v. Villegas (In re Villegas)*, 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

The plaintiff has requested that the court enter default judgment against the defendants on the claims brought in this action. Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court will grant the motion and enter default judgment for the plaintiff on the claims brought against defendant in this adversary proceeding.

The court has the authority to avoid post-petition transfers of property of the estate not authorized by the Bankruptcy Code or by the court. See 11 U.S.C. § 549(a). The court also has the authority to award recovery of post-petition transfers for the benefit of the estate. See 11 U.S.C. § 550(a). Such recoveries may be of the property transferred or the value of such property, from the initial transferee or the entity for whose benefit the transfer was made or from any immediate or mediate transferees of the initial transferee. See 11 U.S.C. § 550(a)(1) & (2).

Based on the undisputed facts, defendant Curtis Davis, Jr., who is the debtor in the underlying chapter 7 case, transferred by assignment to defendant Nikki Tyler-his sister, his entire interest in the probate estate of Barbara Ann Davis. Barbara Davis passed away on February 29, 2016. Her estate was admitted to probate on July 5, 2017. ECF No. 31, Ex. B. The transfer in question was made on July 18, 2018, after Curtis Davis had filed the underlying chapter 7 case on January 18, 2017. ECF No. 31, Ex. A.

Although Curtis Davis filed a declaration with the court on November 9, 2018, the court struck the declaration as non-responsive to the complaint on December 17, 2018. ECF Nos. 7 and 11. Mr. Davis was given until December 26, 2018 to file a response to the complaint. No response was filed and this motion was filed by the plaintiff on January 30, 2019, after the defaults of the two defendants were entered on January 3, 2019. ECF Nos. 20 and 22.

Given the foregoing, the merits of the plaintiff's substantive claims are sound. Both defendants were served with the complaint and summons. Their defaults were not entered due to excusable neglect. Mr. Davis obviously knew of this proceeding, as he had filed a declaration prior to the entry of his default. The court infers from their familial relationship that his sister and co-defendant knew of his declaration and the court's striking of it, but she chose not to participate in the action.

A default judgment against the two defendants is warranted. After entry of an order granting this motion, the court will enter a

judgment avoiding the transfer in question and recovering for the benefit of the estate the property transferred. The court will also declare the property recovered property of the estate.

3. [17-13859](#)-A-7    **IN RE: KYLE PENNINGTON**  
[17-1091](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
12-16-2017    [[1](#)]

MARTINEZ V. PENNINGTON  
KEVIN LITTLE/ATTY. FOR PL.

**No Ruling**

4. [16-10469](#)-A-7    **IN RE: JEFFREY BOHN**  
[18-1050](#)

CONTINUED STATUS CONFERENCE RE: COUNTERCLAIM AGAINST JAMES E. SALVEN, THIRD-PARTY COMPLAINT AGAINST JEFFREY D. BOHN, THE STATE OF CALIFORNIA, EDD, FRANCHISE TAX BOARD, THE INTERNAL REVENUE SERVICE  
10-9-2018    [[15](#)]

SALVEN V. VETTER ET AL  
LISA HOLDER/ATTY. FOR PL.  
DISMISSED

**Final Ruling**

The adversary proceeding dismissed, the status conference is concluded.

5. [18-11471](#)-A-7    **IN RE: ARTURO/MARIA DE LOS ANGELES MACIAS**  
[18-1036](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
11-7-2018    [[47](#)]

CLARK V. MACIAS  
BRAD CLARK/ATTY. FOR PL.  
RESPONSIVE PLEADING

**Final Ruling**

The status conference is continued to May 22, 2019, at 10:00 a.m. If the matter has not been resolved, not later than May 8, 2019, the parties shall file a joint status report.

6. [17-12272](#)-A-7    **IN RE: LEONARD/SONYA HUTCHINSON**  
[17-1076](#)

CONTINUED STATUS CONFERENCE RE: CROSSCLAIM BY JAMES EDWARD SALVEN AGAINST THE UNITED STATES OF AMERICA, DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE  
9-7-2017    [[7](#)]

HUTCHINSON ET AL V. SALVEN ET  
AL  
RUSSELL REYNOLDS/ATTY. FOR PL.

**Final Ruling**

The adversary proceeding resolved, the status conference is concluded.

7. [17-14774](#)-A-7    **IN RE: BILLY MCCARTY**  
[18-1064](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
9-25-2018    [[1](#)]

U.S. TRUSTEE V. MCCARTY  
ROBIN TUBESING/ATTY. FOR PL.

**No Ruling**

8. [17-13776](#)-A-7    **IN RE: JESSICA GREER**  
[18-1017](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
4-23-2018    [[1](#)]

SALVEN V. CALIFORNIA  
DEPARTMENT OF FOOD &  
SHARLENE ROBERTS-CAUDLE/ATTY. FOR PL.

**No Ruling**