

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY

DATE: APRIL 10, 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. [08-17706](#)-A-7 **IN RE: RYAN/MELISSA SWEENEY**
[09-1041](#)

MOTION TO GARNISH THE WAGES OF NON-DEBTOR SPOUSE OF JUDGMENT
DEBTOR
3-13-2019 [[84](#)]

BREMSER V. SWEENEY

Tentative Ruling

Motion: Garnish Wages of Non-debtor Spouse
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Denied without prejudice
Order: Civil minute order

Susan Bremser, the third assignee of a judgment under 11 U.S.C. § 523(a)(2) for \$510,513.00, prays an order authorizing her to garnish the wages of Melissa Ann Sweeney, who she contends is the spouse of the judgment debtor. Neither the judgment debtor, nor Melissa Ann Sweeney, have opposed the motion.

HISTORY

This is the second such attempt by this assignee. The first attempt failed for (1) insufficient proof of standing, and (2) insufficient showings under Cal. Family Code § 1000 (tortfeasor acting on behalf of the community and inadequacy of the tortfeasor's separate property). The movant has cured the standing and inadequacy of separate property problems. But finding inadequate proof on the element of acting on behalf of the community, the court will again deny the motion.

DISCUSSION

State law governs the procedure for collection of a federal judgment. Fed. R. Civ. P. 69(a), *incorporated by* Fed. R. Bankr. P. 7069.

"An earnings withholding order may not be issued against the earnings of the spouse of the judgment debtor except by court order upon noticed motion." Cal. Civ. Proc. Code § 706.109.

Family Code § 1000 governs this motion. As one commentator summarized the law as to when a non-debtor spouse's community property can be held to answer for the debt:

The community property interests of both the debtor and nondebtor spouse generally are liable for debts incurred by either spouse before or during the marriage and prior to separation, regardless of whether the debts are based on contract, tort or otherwise. [Fam.C. §§ 902, 910; see *United States v. Berger* (9th Cir. 2009) 574 F3d 1202, 1203—innocent nondebtor spouse's community property may be reached to satisfy restitution judgment under federal Mandatory Victim Restitution Act against criminally liable spouse]. . . .

However, a judgment based on a spouse's/domestic partner's tort liability (i.e., for death or injury to person or property) is enforceable against the community estate in the first instance only if the tortfeasor was acting on behalf of the community; if the liability is not based on an act or omission for the benefit of the community, the judgment is enforceable against the community estate only to the extent the tortfeasor's separate property is insufficient to satisfy the judgment. [Fam.C. §§ 297.5, 1000(b)(1) & (2)]

Ahart, *California Practice Guide: Enforcing Judgments and Debts*, Enforcement of Judgments, § 3:18 (Rutter Group 2018).

Here, the debt appears to be a tort, which may be held to answer in the first instance, if the tortfeasor was acting to benefit the community. Judgment, September 1, 2010, ECF # 57 (11 U.S.C. § 523(a)(2)). The record does not show that the acts of which the judgment creditor was found liable arise from actions on behalf of the community. Bremser decl. ¶ 6, March 13, 2019, ECF # 84 ("I am informed and believe"); Findings of Fact and Conclusions of Law, Exhibit p. 5, lines 14-19, March 13, 2019, ECF # 84 (finding funds unaccounted for but not specifying use). As a result, the motion will be denied without prejudice.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Susan Bremser's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice.

2. [18-14953](#)-A-7 **IN RE: MELINA ROJAS**
[19-1023](#)

STATUS CONFERENCE RE: COMPLAINT
2-12-2019 [[1](#)]

WEST MEDICAL CENTER, INC. V.
ROJAS
ADAM VAN SUSTEREN/ATTY. FOR PL.
RESPONSIVE PLEADING

Final Ruling

Judgment entered, the status conference is concluded.

3. [14-10260](#)-A-7 **IN RE: PETRA ENRIQUEZ**
[19-1021](#)

STATUS CONFERENCE RE: COMPLAINT
2-5-2019 [[1](#)]

ENRIQUEZ V. HEREDIA ET AL
DAVID JENKINS/ATTY. FOR PL.

Final Ruling

The status conference is continued to May 22, 2019, at 10:00 a.m.
If a judgment or dismissal is not in the file, not later than May 8,
2019, the plaintiff shall file a status report.