

**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: TUESDAY
DATE: SEPTEMBER 18, 2018
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 FOR AN ORDER TO GARNISH THE WAGES OF NON-DEBTOR
SPOUSE OF JUDGMENT DEBTOR
7-23-2018 [[79](#)]

BREMSER V. SWEENEY
CLOSED

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.

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.

Standing

Assignees may enforce judgments. As one commentator noted:

An assignee may become the assignee of record by filing an acknowledgment of assignment with the clerk of the court that entered the judgment (CCP § 673(a)). The acknowledgment must be made in the same manner as an acknowledgment of a real property conveyance. It must be executed and acknowledged by the judgment creditor or by the prior assignee of record (if any). [CCP § 673(c)]

(a) [6:1541] Contents: **The acknowledgment must contain:**

- 1) The title of the court where the judgment is entered and the cause and number of the action;
- 2) The date of entry of the judgment **and any renewals**, and where entered in the court records;
- 3) **The judgment creditor's name and address, and the judgment debtor's name and last known address;**

4) A statement describing the right represented by the judgment that is assigned to the assignee—e.g., whether the assignment is absolute (a sale) or merely for collection, and whether the judgment is for money, etc.;

5) The assignee's name and address. [CCP § 673(b)]

Ahart, *California Practice Guide: Enforcing Judgments and Debts*, Enforcement of Judgments, Enforcement by Assignees § 6:1540-41 (Rutter Group 2018) (emphasis added).

The renewal information, judgment creditors name and last known address, judgment debtor's name and last known address are missing. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (service on attorney insufficient). Finding the Acknowledgement of Assignment of Judgment, November 22, 2017, ECF # 71, insufficient, the moving party lacks standing.

Insufficient Showing under Family Code § 1000

Even if standing were not an issue, the movant has not made a prima facia showing of entitlement.

The same 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)]

Id. at § 3:18 (emphasis added).

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). Otherwise, community property may be accessed on if the tortfeasor's separate property is insufficient. Here, the showing is insufficient. It fails to specify that the tort was for the benefit of the community and, though purports to assert that

separate assets are insufficient, the declaration is not based on Susan Bremser's personal knowledge. 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. [18-10136](#)-A-7 **IN RE: DAVID/KARRIE WHEELER**
[18-1015](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-12-2018 [[1](#)]

EMERSON ET AL V. WHEELER
ROBERT KRASE/ATTY. FOR PL.

Final Ruling

A default judgment having been entered, the status conference is concluded.

3. [18-10239](#)-A-7 **IN RE: JEREMY/JENNIFER HILL**
[18-1025](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
5-12-2018 [[1](#)]

HILL ET AL V. WESTLAKE
SERVICES, LLC
TIMOTHY SPRINGER/ATTY. FOR PL.

Final Ruling

The adversary proceeding having been dismissed, the status conference is concluded.

4. [18-11471](#)-A-7 **IN RE: ARTURO/MARIA DE LOS ANGELES MACIAS**
[18-1036](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
8-10-2018 [[14](#)]

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

Final Ruling

The status conference is continued to October 16, 2018, at 10:00
a.m.

5. [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