

**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: DECEMBER 12, 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. [18-12802](#)-A-7 **IN RE: LORELIE BEATON**
[18-1074](#)

STATUS CONFERENCE RE: COMPLAINT
10-11-2018 [[1](#)]

BEATON V. CAVALRY SPV I, LLC
DAVID JENKINS/ATTY. FOR PL.
DISMISSED 11/26/18

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

2. [18-10136](#)-A-7 **IN RE: DAVID/KARRIE WHEELER**
[18-1015](#)

MOTION TO ADD ALIAS NAMES TO JUDGMENT
10-25-2018 [[37](#)]

EMERSON ET AL V. WHEELER
ROBERT KRASE/ATTY. FOR MV.
CLOSED 09/17/2018

Tentative Ruling

Motion: Add Alias Names to Judgment

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

Disposition: Denied without prejudice

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISCUSSION

The plaintiffs correctly note that federal courts follow state courts with respect to enforcement of judgments. Fed. R. Civ. P. 69, *incorporated by* Fed. R. Bankr. P. 7069.

California Code of Civil Procedure § 187 provides:

When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed

out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Cal. Civ. Proc. Code § 187.

That includes amended amendments to reflect the true name of the defendant:

A California court may use "all the means necessary" to carry its jurisdiction into effect. [CCP § 187; see ¶ 6:1]

This includes amending a judgment against a corporation to add a nonparty alter ego as a judgment debtor. [See *Greenspan v. LADT, LLC* (2010) 191 CA4th 486, 508, 121 CR3d 118, 134-135—judgment confirming arbitration award may be amended to add judgment debtor's alter ego; *Hall, Goodhue, Haisley & Barker, Inc. v. Marconi Conference Ctr. Bd.* (1996) 41 CA4th 1551, 1554-1555, 49 CR2d 286, 288 (same); see also *Misik v. D'Arco* (2011) 197 CA4th 1065, 1074-1075, 130 CR3d 123, 130—failure to allege alter ego doctrine in underlying lawsuit did not preclude court from amending judgment to add judgment debtor's alter ego].

Ahart, *California Practice Guide: Enforcing Judgments and Debts, Enforcement of Judgments, Special Enforcement Procedures* § 6:1565 (Rutter Group June 2018). Federal courts also allow amendment to add a defendant's true name. *Madd Dogg Athletics, Inc. v. NYC Holdings*, 565 F.Supp.2d 1127, 1129-30 (C.D. Cal. 2000).

But such a procedure is not available where judgment was taken by default.

(1) Summary judgment: The court may amend a summary judgment to add the name of a nonparty alter ego. A full-blown trial on the merits in the underlying action is not required. [See *Dow Jones Co., Inc. v. Avenel* (1984) 151 CA3d 144, 148-149, 198 CR 457, 460-461]

(2) [6:1567] **Exception—default judgment: But because of due process concerns, a default judgment is not subject to such an amendment.** [See *Motores de Mexicali, S.A. v. Super.Ct.* (1958) 51 C2d 172, 175-176, 331 P2d 1, 3-4; *Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 CA5th 698, 703-704, 708-709, 209 CR3d 198, 202-203, 206-207; *NEC Electronics, Inc. v. Hurt* (1989) 208 CA3d 772, 779, 256 CR 441, 444]

Id. at § 6:1566-67 (emphasis added).

Here, judgment was obtained by default. Default Judgment, August 29, 2018, ECF # 28. As a result, the plaintiffs may not invoke California Code of Civil Procedure 187 to amend the judgment. The motion will be denied.

CIVIL MINUTE ORDER

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

Darrell Emerson and Carolyn Emmerson's motion has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

3. [18-12737](#)-A-7 **IN RE: SONNY VASQUEZ**
[18-1066](#)

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

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

Final Ruling

The status conference is continued to January 30, 2019, at 10:00 a.m.

4. [17-10152](#)-A-7 **IN RE: CURTIS DAVIS**
[18-1068](#)

STATUS CONFERENCE RE: COMPLAINT
10-5-2018 [[1](#)]

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

No Ruling

5. [14-14453](#)-A-7 **IN RE: SAMUEL LOPEZ**
[14-1141](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-21-2014 [[1](#)]

CALLISON V. LOPEZ
DANIEL BARADAT/ATTY. FOR PL.

Final Ruling

The reference withdrawn, the status conference is concluded.

6. [17-12866](#)-A-7 **IN RE: KHALID CHAOUI**
[18-1075](#)

STATUS CONFERENCE RE: COMPLAINT
10-16-2018 [[1](#)]

CHAOUI V. LYAHYAOUI

No Ruling

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

STATUS CONFERENCE RE: COUNTERCLAIM, AND THIRD-PARTY
COMPLAINT
10-9-2018 [[15](#)]

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

No Ruling

8. [18-11471](#)-A-7 **IN RE: ARTURO/MARIA DE LOS ANGELES MACIAS**
[18-1036](#)

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

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

Final Ruling

The status conference is continued to January 3, 2019, at 10:00 a.m. to coincide with the hearing on the motion to dismiss, November 28, 2018, ECF # 52.

9. [17-12272](#)-A-7 **IN RE: LEONARD/SONYA HUTCHINSON**
[17-1076](#)

CONTINUED PRE-TRIAL CONFERENCE RE: CROSSCLAIM BY JAMES
EDWARD SALVEN
9-7-2017 [[7](#)]

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

No Ruling