

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

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: TUESDAY
DATE: FEBRUARY 7, 2023
CALENDAR: 1:30 P.M. ADVERSARY PROCEEDINGS

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [20-25614](#)-A-7 **IN RE: GREGORY SCHMIDT**
[21-2018](#) [PGM-1](#)

MOTION BY PETER G. MACALUSO TO WITHDRAW AS ATTORNEY
1-5-2023 [[135](#)]

SPENCER T. MALYSIAK PROFIT
SHARING PLAN ET AL V. SCHMIDT
PETER MACALUSO/ATTY. FOR MV.

Final Ruling

The motion is continued to March 4, 2023, at 10:30 a.m. Granting the motion would be prejudicial to defendant Schmidt. "A lawyer shall not terminate a representation until the lawyer has taken reasonable* steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel, and complying with paragraph (e)." California Rule of Professional Conduct Rule 1.16(d). By the court's calculation, the deadline to appeal from the order denying reconsideration is February 7, 2023. Until the court can ascertain whether Schmidt has filed a timely appeal from the orders and/or judgment and, if so, until any prejudice arising from the deadlines applicable to the early stages of an appeal can be addressed, the court believes it improper to allow the movant's withdrawal. A civil minute order shall issue.

2. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2016](#) [GT-6](#)

MOTION TO COMPEL
1-13-2023 [[244](#)]

AFRICAN METHODIST EPISCOPAL
ZION CHURCH ET AL V. AME ZION
HOWARD STEINBERG/ATTY. FOR MV.

No Ruling

3. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2016](#) [GT-7](#)

MOTION TO CONFIRM REQUESTS FOR ADMISSION AND/OR MOTION TO COMPEL
1-13-2023 [[248](#)]

AFRICAN METHODIST EPISCOPAL
ZION CHURCH ET AL V. AME ZION
HOWARD STEINBERG/ATTY. FOR MV.

No Ruling

4. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[21-2016](#) [GT-7](#)

MOTION TO CONFIRM REQUESTS FOR ADMISSION AND/OR MOTION TO
COMPEL
1-13-2023 [\[255\]](#)

AFRICAN METHODIST EPISCOPAL
ZION CHURCH ET AL V. AME ZION
HOWARD STEINBERG/ATTY. FOR MV.

Tentative Ruling

This motion appears to be a duplicate of item number 3 and the court intends to deny it on that basis. A civil minute order shall issue.

5. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2066](#) [GG-1](#)

MOTION FOR ENTRY OF DEFAULT JUDGMENT
1-6-2023 [\[25\]](#)

GOLDEN V. POWELL
DAVID GOODRICH/ATTY. FOR MV.

Final Ruling

The motion is granted, and the moving party shall lodge an order, as well as a judgment, consistent with the findings herein.

6. [20-23726](#)-A-11 **IN RE: AME ZION WESTERN EPISCOPAL DISTRICT**
[22-2076](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
7-29-2022 [\[1\]](#)

GOLDEN V. LIVINGSTONE COLLEGE
DAVID GOODRICH/ATTY. FOR PL.

Final Ruling

At the suggestion of the parties, the status conference is continued to March 7, 2023, at 10:30 a.m. If venue has not been transferred, not later than 14 days prior to the continued status conference the parties will file a joint status report. A civil minute order shall issue.

7. [14-31850](#)-A-13 **IN RE: TUA/SHING VANG**
[21-2079](#)

PRE-TRIAL CONFERENCE RE: COMPLAINT FOR: 1) DECLARATORY
RELIEF TO DETERMINE VALUE AND EXTENT OF LIEN; 2) BREACH OF
CONTRACT; 3) VIOLATION 11 U.S.C. 362 (K) AND 524 (A) (2); 4)
ATTORNEY FEES AND COSTS
11-9-2021 [\[1\]](#)

VANG ET AL V. FAY SERVICING,
LLC
PETER MACALUSO/ATTY. FOR PL.

**Since posting its original rulings, the court has changed its
intended ruling on this matter.**

Final Ruling

At the suggestion of the parties, the status conference is continued
to April 4, 2023, at 10:30 a.m. Not later than 14 days prior to the
continued status conference the parties will file a joint status
report. A civil minute order shall issue.

8. [22-21067](#)-A-7 **IN RE: CHRISTOPHER CARTER**
[22-2043](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: SEALED PER ORDER DATED
07/12/22 COMPLAINT
7-11-2022 [\[1\]](#)

DOE 1 ET AL V. CARTER
LARRY BAUMBACH/ATTY. FOR PL.

Final Ruling

The status conference is continued to April 4, 2023, at 10:30 a.m.
to allow service of the complaint and the defendant to file an
answer. Not later than 14 days prior to the continued status
conference the parties shall file a status report. A civil minute
order shall issue.

9. [22-21067](#)-A-7 **IN RE: CHRISTOPHER CARTER**
[22-2043](#) [FEC-2](#)

CONTINUED ORDER TO SHOW CAUSE
7-12-2022 [[9](#)]

DOE 1 ET AL V. CARTER

Final Ruling

The Order to Show Cause is dismissed, and the adversary proceeding will remain pending.

10. [15-29890](#)-A-7 **IN RE: GRAIL SEMICONDUCTOR**
[18-2180](#) [FEC-7](#)

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

SEDGWICK FUNDINGCO, LLC ET AL
V. NEWDELMAN ET AL
ERIK IVES/ATTY. FOR PL.

Since posting its original rulings, the court has changed its intended ruling on this matter.

Final Ruling

The adversary proceeding dismissed, the status conference is dropped from calendar. No appearance is required.

11. [22-20799](#)-A-7 **IN RE: MICHELLE HILLIS**
[22-2041](#) [PGM-1](#)

MOTION FOR SANCTIONS
1-17-2023 [[22](#)]

GRUNDLAND V. HILLIS
PETER MACALUSO/ATTY. FOR MV.

Final Ruling

Motion: for Sanctions

Notice: LBR 9014-1(f)(3); written opposition required

Disposition: Denied without prejudice

Order: Civil minute order

Defendant Michelle Nicole Nichols has filed a "Motion for Sanctions," under Federal Rule of Civil Procedure 37, apparently for failure to respond to interrogatories. Mot. 1:23-2:12, ECF No. 22.

Finding the motion procedurally deficient, the motion will be denied.

FACTS

Plaintiff and defendant were formerly involved both personally and professionally. Plaintiff employed the defendant. Compl. ¶ 5, ECF No. 1. Plaintiff and defendants were also involved in an intimate personal relationship. *Id.*

Plaintiff owned precious coins. Those included: (1) thirty 2000 American Gold Eagle 1/2 ounce uncirculated coins with an aggregate value of \$35,713; and (2) thirty 2000 American Gold Eagle 1/10 ounce uncirculated coins with an aggregate value of \$7,778. *Id.* at ¶ 6.

On or about August 14, 2020, defendant Hillis took the coins and refused to give them back to plaintiff Grundlund.

Later defendant Hillis filed a Chapter 7 bankruptcy.

On July 7, 2022, plaintiff Grundlund filed this adversary proceeding, which seeks to (1) except Hillis' debt to him from discharge. 11 U.S.C. § 523(a); and (2) deny Hillis' discharge. 11 U.S.C. § 727. Defendant Hillis answered. Answer, ECF No. 9.

On August 31, 2022, the parties filed their Joint Discovery Plan. Discovery Plan, ECF No. 11. The plan provided for an abbreviated discovery schedule, with completion of discovery not later than October 30, 2022. *Id.* at ¶ 5. The parties requested trial in January 2023.

On September 13, 2022, this court issued its scheduling order. Scheduling Order, ECF No. 18. That scheduled largely adopted the parties' shortened discovery schedule but did provide the parties slightly longer to complete discovery.

PROCEDURE

Defendant Hills moves for sanctions. Fed. R. Civ. P. 37(d), *incorporated by* Fed. R. Bankr. P. 7037. Strangely, the motion only seeks sanctions; it does not seek an order compelling a response. Moreover, while the court believes that the underlying discovery dispute arises out of interrogatories (rather than other forms of discovery included in the Certificate of Service), the actual interrogatories alleged served were not filed in support of the motion.

DISCUSSION

No Service

Motions and discovery must be served on the respondent. Acceptable methods of service include: (1) on registered users of the court's electronic filing system by filing it with the Clerk of the Court; or (2) by emailing to a respondent who has consented in writing to that service at a designated email address.

Rule 9036 controls:

(a) In general

This rule applies whenever these rules require or permit sending a notice or serving a paper by mail or other means.

(b) Notices from and service by the court

(1) Registered users

The clerk may send notice to or serve a registered user by filing the notice or paper with the court's electronic-filing system.

(2) All recipients

For any recipient, the clerk may send notice or serve a paper by electronic means that the recipient consented to in writing, including by designating an electronic address for receipt of notices. But these exceptions apply:

(A) if the recipient has registered an electronic address with the Administrative Office of the United States Courts' bankruptcy-noticing program, the clerk shall send the notice to or serve the paper at that address; and

(B) if an entity has been designated by the Director of the Administrative Office of the United States Courts as a high-volume paper-notice recipient, the clerk may send the notice to or serve the paper electronically at an address designated by the Director, unless the entity has designated an address under § 342(e) or (f) of the Code.

(c) Notices from and service by an entity

An entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b) (2) (A) and (B).

Fed. R. Bankr. P. 9036.

In the Bankruptcy Court for the Eastern District of California, Rule 9036 has been implemented by Rule 9036-1:

(a) In General. Persons sending a notice or serving a paper under Fed. R. Bankr. P. 9036 shall file a certificate of service consistent with LBR 7005-1.

(b) Notice from and Service by the Court.

1) Registered Users. As used in Fed. R. Bankr. P. 9036(b)(1), a "Registered User" is defined as any attorney or trustee who files pleadings or other documents in a bankruptcy case or adversary proceeding in the Eastern District of California with the court's electronic filing system. The Clerk of the Court shall maintain and make available in pdf printable form a list of Registered Users by case. All other persons (including unrepresented persons) are not deemed "Registered Users," as that term is used in Fed. R. Bankr. P. 9036(b)(1).

2) Non-registered Users Who Have Consented to Service by Electronic Means. As used in Fed. R. Bankr. P. 9036(b)(2), as applicable to other persons by Rule 9036(c), recipient means those persons who have consented in writing to service by electronic means. Any such consent must specify the party for whom consent is given and the particular means, i.e., email to a specified address, to which consent is given. Any such consent must be signed by a duly authorized representative of that party.

(c) Notices from and Service by an Entity. Any entity may send notice or serve a paper in the same manner that the clerk does under (b), excluding (b)(2)(A) and (B) in Fed. Rule Bankruptcy Procedure 9036. Fed. R. Bankr. P. 9036(c). For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service shall be attached to the Certificate of Service.

LBR 9036-1.

Moreover, since November 1, 2022, attorneys and trustee must memorialize service with EDC Form 7-005. LBR 7005-1. Rule 7005-1 provides:

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by either attorneys, trustees, or other Registered Electronic Filing System Users shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court. In addition to other requirements stated on the Official Certificate of Service Form:

(a) *Unless service is on six or fewer parties in interest and a custom service list is used or the persons served are not on the Clerk of the Court's Matrix, the Certificate of Service Form shall have attached to it the Clerk of the Court's Official Matrix, as appropriate: (1) for the case or the adversary proceeding; (2) list of ECF Registered Users; (3) list of persons who have filed*

Requests for Special Notice; and/or (4) the list of Equity Security Holders.

(b) For persons served electronically pursuant to their consent to such service (not ECF Registered User service by the Clerk of the Court), a copy of the written consent to such electronic service must be attached to the Certificate of Service.

(c) When a Clerk's Office Matrix is attached to the Certificate of Service, for the persons not served by that method of service, the filer shall strike out the names of such persons not served by that method of service.

(d) Where the Clerk's Matrix of Creditors is attached to the Certificate of Service form, such list shall be downloaded not more than 7 days prior to the date of serving the pleadings and other documents and shall reflect the date of downloading. The serving party may download that matrix either in "pdf label format" or in "raw data format." Where the matrix attached is in "raw data format," signature on the Certificate of Service is the signor's representation that no changes, e.g., additions, deletions, modifications, of the data have been made except: (1) formatting of existing data; or (2) removing creditors from that list by the method described in paragraph (c) of this rule.

LBR 7005-1 (emphasis added).

Here, the Certificate of Service purports to accomplish service electronically. Certificate of Service § 6B(1), ECF NO. 25. That section provides:

Service on those parties in interest, listed below, will be effected by filing those documents, listed above, with the Clerk of the Court. Fed. R. Bankr. P. 9036, 7005; Fed. R. Civ. P. 5(b). Electronic service on registered users of the electronic filing system is not permitted for pleadings or papers that must be served in accordance with Fed. R. Bankr. P. 7004. *A copy of the Clerk's Electronic Service Matrix applicable to this case and/or adversary proceeding is appended hereto and numbered Attachment 6B1.*

EDC Form 7-005 § 6B(1) (emphasis added).

Interrogatories

Here, interrogatories were emailed to plaintiff's counsel. Ex. 1 (Certificate of Service), Exhibits in Support of Motion for Sanctions, ECF No. 24. Such a service is only valid if the recipient consented in writing to service in that fashion. Fed. R. Bankr. P. 9036. Such a written consent must be appended to the Certificate of Service. LBR 9036-1. It was not. And, therefore,

insofar as the court can discern the interrogatories were never actually served on the respondent.

Motion for Sanctions

Here, electronics service was not proper. First, as to registered users of the court's electronic-filing system, there is no evidence before this court that the respondent is an electronic filer. The appended Attachment 6B(1) is not the "Clerk's Electronic Service Matrix," but rather a custom typed list. Second, it purports to accomplished service by emailing it to the respondent. Service by email accomplished by the sender is only applicable if the respondent has consented in writing to service in that manner and at that address. And local rules require the written consent to be appended to the Certificate of Service. LBR 9036-1.

As a result, service is insufficient.

Untimeliness

The motion is untimely. This court set a deadline to conduct discovery, including ancillary motions, of December 26, 2022. Scheduling Order §§ 1.0, 5.3, ECF No. 18. The Scheduling Order makes clear that the fact discovery deadline encompasses discovery dispute motions.

Each category of disclosure and discovery shall be completed no later than the date set forth in section 1.0 of this order. *The word "completed" means that all discovery shall have been concluded, such that all disclosures have been made, depositions taken (including expert depositions), interrogatories answered, documents produced, inspections performed, admissions made, and discovery disputes resolved.*

Id. at § 5.1 (emphasis added).

Such a motion must have been heard by December 26, 2022. Scheduling Order §§ 1.0, 5.1, 5.3, 6.0. This motion was not filed until January 17, 2023; it was noticed for hearing on February 7, 2023. It is untimely.

No Declaration

No declaration has been filed in support of the motion. LBR 9014-1(d)(3)(D). Without such a declaration, the court cannot tell (1) the contents of the interrogatories (which were not otherwise provided); (2) whether the plaintiff failed to answer; (3) the authenticity of the emails purporting to meet and confer; and/or (4) the time counsel has spent trying to resolve the matter.

CIVIL MINUTE ORDER

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

Michelle Nicole Hillis's motion has been presented to the court.
Having considered the motion together with papers filed in support,
IT IS ORDERED that the motion is denied.