

**FILED & ENTERED**

**JUN 26 2015**

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY bakchell DEPUTY CLERK

**ORDER NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re

**RITA GAIL FARRIS-ELLISON,**  
Debtor(s).

Case No. 2:11-bk-33861-RK

Chapter 7

Adv. No. 2:12-ap-01830-RK

**ORDER DENYING MOTION TO  
COMPEL DISCOVERY RESPONSES  
WITHOUT PREJUDICE AND  
CONTINUING HEARING ON MOTION  
FOR SUMMARY JUDGMENT FROM  
JULY 21, 2015 TO AUGUST 25, 2015  
AT 2:00 P.M.**

**JAMES LEE CLARK**

Plaintiff(s),

vs.

**RITA GAIL FARRIS-ELLISON**

Defendant(s)

On June 8, 2015, Plaintiff James Clark ("Plaintiff") filed a Motion for an Order Compelling Discovery and Sanctions Against Defendant/Debtor Rita Ellison-Farris [sic] ("Motion") (ECF 15). The Motion asks the court to compel disclosure and discovery from

1 Debtor and to award sanctions. The court has reviewed the Motion and has determined  
2 that it should be denied without prejudice because the Motion is procedurally improper.  
3 Specifically, the Motion seeks to compel discovery which has not been authorized or is  
4 procedurally defective and the Motion does not comply with the procedures for resolving  
5 discovery disputes laid out in Local Bankruptcy Rule 7026-1(c). Accordingly, the court  
6 will rule on the Motion on the papers without hearing and will deny the Motion without  
7 prejudice.

8 Plaintiff contends that Defendant failed to respond to his discovery of “debtor  
9 examination” of Defendant (Exhibit A), which refers to his Motion for Rule 2004  
10 Examination. However, Plaintiff forgets that the court did not rule on his Motion for Rule  
11 2004 Examination, and at the hearing on April 29, 2015, the court continued the hearing  
12 on the Motion for Rule 2004 Examination to August 25, 2015 at 2:00 p.m. The court  
13 continued the hearing on this motion in part to allow the parties to go through a mediation  
14 process. At this time, the court is aware that the mediation was eventually unsuccessful  
15 as indicated by the mediator’s certificate filed on May 20, 2015, which stated that the  
16 matter was not settled. Nevertheless, there is nothing to compel with respect to the  
17 discovery of “debtor examination” because the court has not ruled on the Rule 2004  
18 Examination Motion, and thus, the motion to compel discovery should be denied without  
19 prejudice as to this discovery.

20 Plaintiff contends that Defendant failed to respond to discovery “subpoena to  
21 testify” (Exhibit B), which refers to a subpoena to testify at a deposition in a bankruptcy  
22 case or adversary proceeding to Defendant. However, the subpoena is improper  
23 because it is for a deposition and there is no showing that there was a proper notice of  
24 deposition of Defendant prepared and served in accordance with Rule 7030 of the  
25 Federal Rules of Bankruptcy Procedure and Rule 30 of the Federal Rules of Civil  
26 Procedure. There is no notice of deposition as required by these rules. There is only a  
27 copy of a subpoena as part of the Motion. Moreover, a subpoena is required to be  
28 served in person on the subpoenaed party with a tender of witness and mileage fees if

1 the subpoena requires that person's attendance in accordance with Rule 9016 of the  
2 Federal Rules of Bankruptcy Procedure and Rule 45 of the Federal Rules of Civil  
3 Procedure. The Motion does not show that the subpoena was served on Defendant in  
4 person with a tender of witness and mileage fees. The proof of service of the subpoena  
5 is unsigned, so there is no showing of proper service of any subpoena under these rules.  
6 Plaintiff says he "serves" the discovery on Defendant, but there is no proof of that being  
7 done in the manner required by the applicable rules. Because the subpoena to testify at  
8 the deposition did not accompany a proper notice of deposition and there is no proof of  
9 proper service of the deposition subpoena on Defendant in person with a tender of  
10 witness and mileage fees, the Motion to compel this discovery is denied without  
11 prejudice.

12 Local Bankruptcy Rule 7026-1(c)(2) states:

13 Prior to the filing of any motion relating to discovery, counsel  
14 for the parties must meet in person or by telephone in a  
15 good faith effort to resolve a discovery dispute. It is the  
16 responsibility of counsel for the moving party to arrange the  
17 conference. Unless altered by agreement of the parties or by  
18 order of the court for cause shown, counsel for the opposing  
19 party must meet with counsel for the moving party within 7  
20 days of service upon counsel of a letter requesting such  
21 meeting and specifying the terms of the discovery order to  
22 be sought.

19 Plaintiff has attached as Exhibit C to the Motion a "Meet and Confer Letter", but the  
20 document in that exhibit does not comply with the requirement of Local Bankruptcy Rule  
21 7026-1(c)(2), which requires the moving party to attempt to arrange a conference and  
22 specify the discovery order to be sought. The document in Exhibit C does neither of  
23 these, as it does not specify the discovery order to be sought and does not attempt to  
24 arrange a meeting, but states that a motion to compel will be filed within 10 days if the  
25 requested is not produced and invites the recipient to call Plaintiff. This is not a proper  
26 "meet and confer" letter as required by Local Bankruptcy Rule 7026-1 (c)(2), because it  
27 does not try to arrange for a discovery dispute conference; it is simply a demand letter  
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1 which does not meet the requirements of the rule to meet and confer before filing a  
2 discovery dispute motion.

3 Because Plaintiff has not complied with the relevant Local Bankruptcy Rules, the  
4 Motion is DENIED without prejudice. Because the court denies Plaintiff's Motion to  
5 Compel, the hearing on the Motion on June 30, 2015 at 2:30 p.m. is vacated. No  
6 appearances are required on June 30, 2015.

7 On June 8, 2015, Plaintiff filed another motion for summary judgment, which is set  
8 for hearing on July 21, 2015 at 3:30 p.m. Plaintiff also has his original motion for  
9 summary judgment which has not been ruled upon by the court. At the hearing in this  
10 matter on April 29, 2015, the court continued the hearing on the original motion for  
11 summary judgment to August 25, 2015 at 2:00 p.m. The court continued the hearing on  
12 this motion in part to allow the parties to go through a mediation process. Because the  
13 court has already set a date for hearing on the original motion for summary judgment, the  
14 court is not permitting another hearing on a summary judgment motion for a different or  
15 earlier date. The second motion for summary judgment that Plaintiff filed on June 8,  
16 2015 appears to be the same in substance as the original motion for summary judgment.  
17 To the extent the second motion for summary judgment is different than the first motion  
18 for summary judgment, it can be argued at the hearing on the first motion for summary  
19 judgment on August 25, 2015 at 2:00 p.m. Accordingly, the court continues the hearing  
20 on Plaintiff's motion for summary judgment filed on June 8, 2015 from July 21, 2015 at

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1 3:30 p.m. to August 25, 2015 at 2:00 p.m. No appearances on the second motion for  
2 summary judgment will be required on July 21, 2015.

3 IT IS SO ORDERED.

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24 Date: June 26, 2015



Robert Kwan  
United States Bankruptcy Judge