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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Melissa L. Cook,

10 Plaintiff,

11 v.

12 Peak Endeavors LLC, *et al.*,

13 Defendants.
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No. CV-22-08104-PCT-JJT

ORDER

15 At issue is Plaintiff/Judgment Creditor/Garnishor Melissa L. Cook's Notice of
16 Lodging Form of Order (Doc. 16).

17 As the Court stated in its prior Order (Doc. 13), this is a garnishment action brought
18 by Plaintiff/Garnishor Melissa L. Cook, and after proper removal by Garnishee Aegis
19 Insurance Company, the Federal Rules of Civil Procedure apply to this action. The Writ of
20 Garnishment (Doc. 1-3) and Answer thereto (Doc. 4) are presently the operative pleadings.
21 In the prior Order (Doc. 13), the Court ordered Plaintiff to file an amended pleading to
22 clarify the claims in this matter. Instead, Plaintiff filed a Notice of Lodging Form of Order,
23 in which Plaintiff seems to state that, upon withdrawal of her previously filed Response
24 (Doc. 12) to Aegis's Objection to Plaintiff's request for a hearing on her objection to
25 Aegis's Answer, this action is somehow over. (Docs. 16, 16-1.)

26 To begin with, Plaintiff's Response brief (Doc. 12) did not trigger this action;
27 Plaintiff's Writ of Garnishment (Doc. 1-3) did. Thus Plaintiff's withdrawal of the Response
28 brief did not terminate the action. Next, the filing of a "Form of Order" is not contemplated

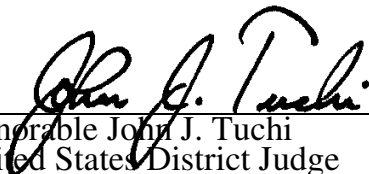
1 by the Federal Rules of Civil Procedure as a way for a plaintiff to voluntarily dismiss an
2 action pending before this Court. Rule 41 provides that a plaintiff may unilaterally
3 voluntarily dismiss an action only when no answer or motion for summary judgment has
4 been filed. Fed. R. Civ. P. 41(a)(1)(A)(i). Otherwise, in an instance such as this where an
5 Answer has been filed (Doc. 4), a plaintiff can only request dismissal of an action by filing
6 “a stipulation signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(ii).

7 As a result, this action remains pending, and Plaintiff has not timely filed the
8 amended pleading as required by the Court. (Doc. 13.) If the parties have agreed to
9 dismissal of this action, they may file a stipulation to that effect. Otherwise, Plaintiff’s
10 failure to file an amended pleading as ordered by the Court will result in a dismissal for
11 failure to prosecute this action and judgment in favor of Garnishee Aegis Insurance
12 Company.

13 **IT IS THEREFORE ORDERED** denying Plaintiff/Judgment Creditor/Garnishor
14 Melissa L. Cook’s request in the Notice of Lodging Form of Order (Doc. 16) for dismissal
15 of this action.

16 **IT IS FURTHER ORDERED** that, by August 12, 2022, Plaintiff shall either file
17 an amended pleading, as previously ordered by the Court (Doc. 13), or a stipulation of
18 dismissal signed by all parties under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). If
19 Plaintiff fails to make such a filing, Garnishee Aegis Insurance Company may seek
20 judgment in its favor for Plaintiff’s failure to prosecute this action.

21 Dated this 29th day of July, 2022.

22 
23 Honorable John J. Tuchi
24 United States District Judge
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