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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Avazian, Gevorg  
A070917333,  
  
Plaintiff,  
  
v.  
  
Rand BEERS, Acting Secretary  
of Department of Homeland  
Security; Alejandro MAYORKAS,  
Director, U.S. Citizenship  
and Immigration Services;  
Mari-Carmen JORDAN, Director,  
U.S. Citizenship and  
Immigration Services  
Sacramento Office; and  
Michael C. BIGGS, Field  
Officer Director, USCIS,  
Sacramento Office,  
  
Defendants.

No. 2:13-cv-02589-GEB-AC

**ORDER RE MONETARY SANCTION**

An Order Imposing Monetary Sanctions filed March 21, 2014, sanctioned Plaintiff's attorney, Douglas Lehrman five hundred dollars for failing to timely file a status report. (Order Imposing Monetary Sanctions, ECF No. 5.) The docket reflects that Mr. Lehrman timely paid the monetary sanction as ordered. Mr. Lehrman also failed to timely respond to the OSC involved with the sanction, and indicates in his untimely

1 response to the OSC and sanction, that he is not personally  
2 responsible for understanding applicable rules of practice in  
3 this court.

4 His late response was filed on March 27, 2014, in a  
5 filing that essentially seeks reconsideration of the Court's  
6 monetary sanctions order, and assumes he could have an expedited  
7 hearing scheduled, even though he is the sole blame for the  
8 sanction he received. Mr. Lehrman's request for an expedited  
9 hearing is not justified and is denied.

10 In support of the request for reconsideration, Mr.  
11 Lehrman avers:

12 This case was the first time since 2008  
13 that Counsel had used the Pacer e-mailing  
14 account and mistakes resulted due to having  
15 an inactive password and errors which  
16 resulted in our failure to receive complete  
17 notices in this case. Counsel's failure to  
18 reply was due to . . . mistakes in accessing  
19 documents contained in our office's Pacer  
20 electronic filing account. These mistakes  
21 resulted in counsel's failure to calendar the  
22 date of the Pretrial Conference Statement  
23 that was due 14 days prior to the conference  
24 and to Respond to the Court's Order to Show  
25 Cause. . . .

26 . . . .  
27 Counsel is humbly requesting his Honor  
28 to waive or lower sanctions on counsel due to  
his mistake and inadvertence in not  
responding to the electronic notices  
properly. It was not intentional nor in  
blatant disregard or respect for this  
court . . . .

I will strive to master the electronic  
filing requirements and timely respond to all  
deadlines ordered by the court. I have not  
been sanctioned by this court nor any other  
court in my 32 years of practice.

1           For the foregoing reasons, Counsel urges  
2           your Honor to grant his request that monetary  
3           sanctions be dismissed against Counsel and  
4           forgive his failure to respond on a timely  
5           basis . . . .

6 (Pl.'s Mot. to Dismiss Monetary Sanctions 2:10-4:4.)

7           In essence, Plaintiff's counsel's excuse for failing to  
8           timely file a status report, and for his untimely response to the  
9           OSC, is his and his staff's lack of familiarity with the Court's  
10          Electronic Case Filing ("ECF") system. "The fact that  
11          [Plaintiff's counsel's use of the Court's ECF System] is rare or  
12          infrequent, however, is no excuse . . . ." Dela Rosa v.  
13          Scottsdale Mem'l Health Sys., Inc., 136 F.3d 1241, 1244 (9th Cir.  
14          1998).

15                 [An] attorney practicing law in [this] court  
16                 [is expected] to become familiar with and  
17                 follow rules applicable to practice in this  
18                 court. It is incumbent upon an attorney  
19                 practicing in [this court] . . . to secure  
20                 and study . . . the local rules of this  
21                 [court] so that he or she will know what is  
22                 expected by the court, the form in which a  
23                 case is presented, and the consequences  
24                 inherent in noncompliance. Such behavior is  
25                 not only a mark of elementary professional  
26                 competence, but is common sense to attorneys  
27                 seeking to zealously represent the interests  
28                 of their clients.

29           Id. Since 2005, "all cases filed and pending in the Eastern  
30           District of California [have been] subject to electronic filing  
31           [and] service." (Form Pet. by Att'y for Admis. to E. Dist. of  
32           Cal.) To practice in the Eastern District of California,  
33           Plaintiff's counsel was required to register for use of the  
34           Court's ECF system. (Id.) In registering for ECF usage, attorneys  
35           are instructed to "periodically access the[ Local Rules] and  
36           [CM/ECF User's Manual] in order to understand electronic filing

1 requirements." (Id.)

2 Further, although "[i]t is certainly understandable  
3 that attorneys frequently choose to delegate [the filing of  
4 documents and calendaring of deadlines] to paralegals or other  
5 associates, . . . it should never be forgotten that the attorney  
6 of record is ultimately responsible for [those tasks]." Dela  
7 Rosa, 136 F.3d at 1244.

8 "The cogs of the wheel of justice move much more  
9 smoothly when attorneys who practice in this court follow the  
10 rules of practice and procedure" that have been "carefully  
11 developed and adopted." Id.

12  
13 Rules are rules-and the parties must play by  
14 them. . . . [A] district judge must often be  
15 firm in managing crowded dockets and  
16 demanding adherence to announced deadlines.  
17 If he or she sets a reasonable due date,  
18 parties should not be allowed casually to  
19 flout it or painlessly to escape the  
20 foreseeable consequences of noncompliance.

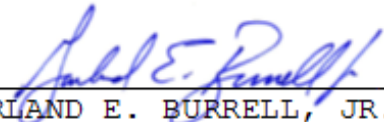
21 Legault v. Zambarano, 105 F.3d 24, 29 (1st Cir. 1997) (quoting  
22 Mendez v. Banco Popular de Puerto Rico, 900 F.2d 4, 7 (1st Cir.  
23 1990)) (internal quotation marks omitted); see also Ayers v. City  
24 of Richmond, 895 F.2d 1267, 1270 (9th Cir. 1990) (affirming  
25 sanction of lawyer for failure to attend a settlement conference  
26 because "the date 'slipped by him'").

27 Although Plaintiff's counsel's and his staff's  
28 unfamiliarity with the Court's ECF system does not excuse  
Plaintiff's counsel's referenced failures, the Court will not  
impose a sanction this time in light of the nature of Mr.  
Lehrman's assurances that this mishap will not happen again.

1 Therefore, the Clerk's Office shall return to Plaintiff's  
2 counsel's his payment of five hundred dollars.

3 Dated: March 28, 2014

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GARLAND E. BURRELL, JR.  
Senior United States District Judge