

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

KELLEYE KIRKLAND

PLAINTIFF

V.

CASE NO. 5:16-cv-05234

**PTS OF AMERICA; DAVID HEDRICK,
FORMER PTS OF AMERICA DRIVER;
LLOYD DAVIS, PTS OF AMERICA
DRIVER; and CLEVELAND WHEELER,
FORMER PTS OF AMERICA DRIVER**

DEFENDANTS

OPINION AND ORDER

Plaintiff filed this civil rights case pursuant to 42 U.S.C. § 1983. Plaintiff proceeds *pro se* and *in forma pauperis*. Plaintiff is not incarcerated.

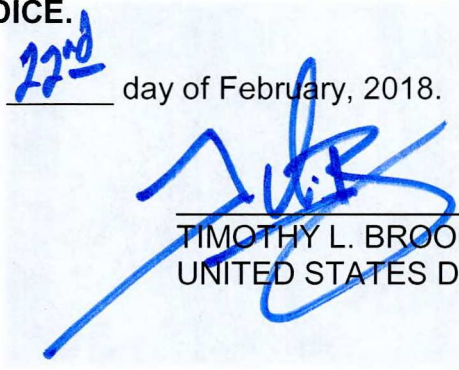
Defendants have filed a Motion to Dismiss (Doc. 39) based on Plaintiff's failure to participate in discovery. Specifically, she has not responded to discovery requests propounded on November 6, 2017, and she failed to appear at her deposition scheduled for December 14, 2017. On December 15, 2017, Defendants' counsel attempted to re-schedule the deposition and asked Plaintiff to respond to the outstanding discovery requests. Defendants' counsel indicates they have not received a response from Plaintiff and no mail has been returned as undeliverable.

Pursuant to Rule 37(d) of the Federal Rules of Civil Procedure, if a party fails to appear at a properly noticed deposition and/or fails to respond to discovery requests, and such failure is not excused, the Court may impose sanctions including the dismissal of the action. Here, Plaintiff has not responded to Defendants' good faith efforts to resolve the

discovery issues. She has not responded to the Motion to Dismiss. Therefore, her behavior is not excused.

Accordingly, Defendants' Motion to Dismiss (Doc. 39) is **GRANTED**, and this action is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED on this 22nd day of February, 2018.



TIMOTHY L. BROOKS
UNITED STATES DISTRICT JUDGE