

1 reasonable accommodations for her disability and “medically” terminating her effective March
2 27, 2009. Complaint, ¶ 20. Defendant answered the complaint on July 6, 2011.

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4 On August 26, 2011, the Court issued a Scheduling Order, which set the non-expert
5 discovery deadline for on June 6, 2012, and the expert discovery deadline for September 28,
6 2012. Doc. 16.

7 On May 2, 2012, Defendant served Plaintiff with three special interrogatories seeking the
8 following: (1) witnesses with “personal knowledge of each incident of refusal to reasonably
9 accommodate;” (2) witnesses with “personal knowledge that, with reasonable accommodation,
10 [Plaintiff] could perform the essential functions of a Staff Services Analyst II with Merced
11 County;” and (3) witnesses with “personal knowledge of [Plaintiff’s] mental anguish and pain
12 and suffering as a result of defendant’s actions.” Exhibit A to Declaration of Roger S. Matzkind
13 (“Matzkind Dec.”). Plaintiff did not respond to these interrogatories.

14 On June 11, 2012, after the non-expert discovery deadline, defense counsel faxed a letter
15 to Plaintiff’s counsel requesting a response to the interrogatories by June 18, 2012. Exhibit B to
16 Matzkind Dec. Plaintiff did not respond to the letter.

17 On July 3, 2012, defense counsel faxed another letter to Plaintiff’s counsel requesting
18 answers to the interrogatories or a time to contact the Magistrate Judge to discuss the matter.
19 Exhibit C to Matzkind Dec. In response, Plaintiff’s counsel sent an e-mail to Stefanie Powell,
20 legal assistant to defense counsel, stating that there was no discovery dispute and that responses
21 should be provided by July 17, 2012. Exhibit A to the Declaration of Stefanie Powell. However,
22 Plaintiff did not provide responses by July 17, 2012.

23 On July 24, 2012, defense counsel faxed and mailed another letter to Plaintiff’s counsel
24 requesting answers or a time to contact the Magistrate Judge to discuss the matter. Exhibit D to
25 Matzkind Dec. Plaintiff did not respond to the letter.
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1 On October 15, 2012, defense counsel sent another letter to Plaintiff's counsel regarding
2 Defendant's motion for summary judgment and again requested answers to the interrogatories or
3 a time to contact the Magistrate Judge to discuss the matter. Exhibit E to Matzkind Dec.
4 Plaintiff did not respond to the letter.
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6 Due to Plaintiff's failure to respond to the special interrogatories, Defendant filed the
7 present motion for sanctions. Plaintiff did not respond to the motion.

8 **DISCUSSION**

9 Federal Rule of Civil Procedure 37(d) authorizes the Court to impose sanctions for a
10 party's failure to serve answers, objections or written responses to interrogatories. Fed. R. Civ. P.
11 37(d)(1)(A)(ii). Here, Plaintiff did not respond to the special interrogatories. Defendant
12 therefore requests that Plaintiff be prohibited from offering the testimony of any witness falling
13 within the categories of witnesses sought by the special interrogatories. Rule 37 permits such an
14 exclusionary sanction, stating that a disobedient party may be prohibited "from introducing
15 designated matters in evidence." Fed. R. Civ. P. 37(b)(2)(A) and (d)(3). As Plaintiff has not
16 opposed the request and has not provided any evidence that the failure to respond should be
17 excused, the Court finds that imposition of sanctions are warranted. Plaintiff will be prohibited
18 from presenting testimony from any witnesses falling within the categories of witnesses sought
19 by special interrogatories. However, this prohibition does not include those witnesses, if any,
20 that were otherwise disclosed to Defendant before conclusion of the discovery deadlines.
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22 In addition to this sanction, Rule 37 provides that the Court "must require the party
23 failing to act, the attorney advising that party, or both to pay the reasonable expenses, including
24 attorney's fees, caused by the failure, unless the failure was substantially justified or other
25 circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(d)(3). There is no
26 evidence before the Court to suggest that Plaintiff's failure to respond to the special
27 interrogatories was substantially justified or that other circumstances make an award of expenses
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1 unjust. Accordingly, Plaintiff and her counsel shall be required to pay Defendant's reasonable
2 expenses, including attorney's fees, caused by the failure to respond. In order to award such
3 fees, Defendant shall be required to file a declaration detailing the expenses incurred.
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5 **CONCLUSION AND ORDER**

6 For the reasons stated, the Court HEREBY ORDERS as follows:

- 7 1. Defendant's motion for sanctions for failure to serve answers to interrogatories is
8 GRANTED;
- 9 2. Plaintiff SHALL BE PROHIBITED from presenting testimony from any witnesses
10 falling within the categories of witnesses sought by the special interrogatories. This
11 prohibition shall not include those witnesses, if any, that have otherwise been
12 disclosed to Defendant during discovery;
- 13 3. Plaintiff and her counsel SHALL PAY Defendant's reasonable expenses, including
14 attorney's fees, caused by the failure to respond; and
- 15 4. Defendant SHALL FILE a declaration detailing the expenses incurred within seven
16 (7) days after service of this order
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19 IT IS SO ORDERED.

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21 Dated: November 8, 2012

/s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE
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