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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PHILLIP SANDERS,

 Plaintiff,

 v.

MATTHEW *et al.*,

 Defendants.

Case No. 1:15-cv-00395-LJO-EPG

**FINDINGS AND RECOMMENDATIONS
THAT DEFENDANTS’ MOTION FOR
TERMINATING SANCTIONS BE
GRANTED**

(ECF No. 55)

**OBJECTIONS DUE WITHIN THIRTY (30)
DAYS**

I. INTRODUCTION

Phillips Sanders (“Plaintiff”), appearing *pro se* and *in forma pauperis*, commenced this action pursuant to 42 U.S.C. § 1983 on March 12, 2015. (ECF No. 1). This action now proceeds on Plaintiff’s Second Amended Complaint (“SAC”) against City of Fresno Police Officers Mathew Silver s/h/a Matthew and Brian Sturgeon (collectively, “Defendants”) for unlawful arrest and excessive force. (ECF Nos. 23, 25).

Now before the Court is Defendants’ Motion to Compel Production of Initial Disclosures and Request for Sanctions. (ECF No. 55). Because Plaintiff has failed to provide his initial disclosures for months, even after an extended deadline, this Court recommends that Defendants’ motion for terminating sanctions be granted.

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1 **II. BACKGROUND**

2 On May 5, 2017, the Court issued an order setting an Initial Scheduling Conference for
3 August 8, 2017. (ECF No. 32). The Order provided, “Attendance at the Scheduling Conference
4 is mandatory for all parties. . . . If a party is not represented by counsel, they must appear
5 personally at the Scheduling Conference.” *Id.*

6 On August 22, 2017,¹ the Court held the Scheduling Conference. (ECF No. 49).
7 Plaintiff did not appear at the Conference despite being ordered to do so. *Id.* Nevertheless, the
8 Court issued a Scheduling Conference Order setting an initial disclosures deadline of
9 September 29, 2017. (ECF No. 50).

10 On October 12, 2017, the Court set a Telephonic Informal Discovery Dispute
11 Conference at the request of Defendants to discuss Plaintiff’s failure to provide initial
12 disclosures. (ECF No. 52). Plaintiff telephonically appeared on his own behalf, and Stephanie
13 Snyder telephonically appeared on behalf of Defendants for the Conference on October 23,
14 2017.² (ECF No. 54). The parties discussed Plaintiff’s failure to provide his Rule 26 initial
15 disclosures. The Court explained Plaintiff’s obligation to serve Rule 26 initial disclosures and
16 the importance of fulfilling the obligation. Specifically, the Court stated,

17 There is a requirement to do Initial Disclosures under Rule 26 of
18 the Federal Rules of Civil Procedure. Although there are some
19 types of cases that are exempted as described in Rule 26(a)(1)(b),
20 this is not one of them. So, Mr. Sanders does have an obligation
21 and that includes, for example, the name, address, and telephone
22 number of each individual likely to have discoverable
information, a copy or a description by category and location of
the documents the party may use in support of its claims and
defenses, a computation of each category of damages, and
insurance which may not be applicable here. . . .

23 You need to say the people who have information about your
24 claims and those were only the claims that were upheld in this
25 case [Y]our claim for unlawful arrest, which was claims 4
and 5, and excessive force, which was claims 2 and 6 against
Defendants Matthew and Sturgeon. And you need to write out all

26
27 ¹ On July 31, 2017, Plaintiff filed a motion to continue the August 8, 2017 Scheduling Conference for health
28 reasons and to reset the Conference before Chief U.S. District Judge Lawrence J. O’Neill. (ECF No. 44). The
Court declined to reset the Scheduling Conference before Chief District Judge O’Neill, but continued the
Conference to August 22, 2017. (ECF No. 45).

² The October 23, 2017 Telephonic Informal Discovery Dispute Conference was audio recorded. (ECF No. 54). A
copy or transcript of the recording is available to the parties upon request.

1 the people that you think would support those and then you need
2 to just have—you can just have a list of category of documents,
especially if you think that the defendants already have the
documents, but you do need to do that category.

3 *Id.* In response, Plaintiff stated that he did not think that Rule 26 applied in this action, but
4 agreed that he would provide the disclosures two weeks from the date of the informal
5 conference. Accordingly, the Court extended the deadline for Plaintiff to serve his Rule 26
6 initial disclosures to November 6, 2017, warning that a failure to do so could result in
7 sanctions. The Court further granted Defendants leave to file a motion to compel and/or for
8 sanctions if Plaintiff failed to serve his disclosures by the deadline. *Id.* (“After discussion with
9 the parties, plaintiff agrees to serve his Rule 26 Initial Disclosures on defendants by the close of
10 business on 11/6/2017. The Court further grants defendants permission to file a motion to
11 compel or for sanctions, if said disclosures are not served by 11/6/2017.”)

12 On November 7, 2017, Defendants filed a Motion to Compel Production of Initial
13 Disclosures and Request for Sanctions. (ECF No. 55). Defendants assert that Plaintiff did not
14 produce his initial disclosures as ordered by the Court. Defendants request the imposition of
15 sanctions to the extent permitted by law, including monetary sanctions and dismissal of this
16 action.

17 Plaintiff did not timely oppose the motion. On November 30, 2017, the Court extended
18 Plaintiff’s time to respond to the motion to compel. (ECF No. 57). Plaintiff submitted his
19 opposition to the motion to compel on December 28, 2017, arguing that the motion was
20 improperly noticed; that he had received an extension from Defendants until December 22,
21 2017, to complete his disclosures; and that his father died on November 19, 2017, which further
22 delayed his disclosures. (ECF No. 58). Plaintiff also accused the Court of violating the rules
23 and engaging in favoritism. *Id.* at 4 (“NO ONE FOLLOWED PROPER PROTOCOL EVEN
24 THIS COURT VIOLATED Their OWN CIVIL PROCEDURE CODE HINTING
25 FAVORITISM AT THE END OF THE DAY WIN OR LOST THIS CASE . . . WHEN A
26 SYSTEM CAN BE SO EASILY MANIPULATED IT SLOWLY REPEALS SLAVERY
27 GIVING JUDGES THE POWER OF PLANATION OWNERS WHILE THEY ARE EXEMPT
28 FROM THE LAW BAD AS IT SOUNDS THEY HAVE FIGURED OUT HOW TO

1 LEGALIZE HUMAN TRAFFICKING BY THROWING ME IN JAIL FOR CHARGES I DID
2 NOT DO PUT FINES ON ME THEN TELL ME TO DO A WORK PROGRAMS.”)
3 (capitalization in original).

4 On February 28, 2018, the Court held a conference on the Motions to Compel and the
5 general status of the case.³ (ECF Nos. 62, 63). Plaintiff appeared telephonically, and
6 Defendants appeared telephonically through counsel, Stephanie Snyder. Plaintiff represented
7 that he had already provided initial disclosures through email correspondence. Specifically,
8 when asked by the Court, “What are the names of the people, when you said you disclosed
9 them, what names did you give?” Plaintiff responded, “Officer Matthews, Officer Sturgeon—
10 Public Defender, I think, Sabrina Ashjian.” *Id.* Defense counsel disputed this. The Court gave
11 both parties one week to supplement the record in connection with the motion to compel,
12 including any evidence that Plaintiff has complied with the initial disclosures requirement or
13 any evidence from Defendants that this representation is incorrect.

14 During the Conference, Plaintiff also admitted that he called defense counsel’s office
15 the day before using the false name, “David Jones.”

16 On February 28, 2018, and March 7, 2018, the parties filed supplemental submissions.
17 (ECF Nos. 64, 65). Defendants submitted almost sixty pages of correspondence between the
18 parties. (ECF No. 64). Plaintiff submitted a copy of an email correspondence sent on November
19 13, 2017, to defense counsel with the subject line, “plaintiffs [sic] Amended Disclosures and
20 attached finding and recommendation order.” (ECF No. 65). The email contained responses to
21 “documents requested.” In response, on November 16, 2017, defense counsel replied:

22 Thank you for your e-mails, however, you still have failed to
23 produce the Initial Disclosures as required by FRCP, and the
24 Court’s Order. The responses you are providing are to Special
25 Interrogatories and Requests for Production of Documents, which
26 are discovery requests, separate and distinct from the Initial
27 Disclosure Requirement.

28 *Id.* Plaintiff did not submit any documents showing he had complied with initial disclosures or
otherwise emailed the names of persons with likely to have discoverable information as he

³ The February 28, 2018 Conference was audio recorded, (ECF No. 62), and the recording is available to the parties upon request, as well.

1 claimed during the conference. Instead, he discussed his father's death and other personal
2 issues, and claimed that the "city attorney jumped the gun and filed a motion for sanctions
3 while I was trying to comply with by the 22nd for what I feel was a [sic] untimely motion."
4 *Id.* at 2. He then argued that Defendants cannot file a motion to compel if they have not
5 produced their own discovery. *Id.* at 4-5 ("I smell a big rat either the public defender who sent
6 my police reports by email for the discovery of this case or the city attorney who sent the police
7 report by email as there Amended Disclosures are lying guilty of obstruction of justice and
8 accessory to commit [.] this raised a new set of facts that need to be addressed by this court
9 and the department of justice how you can file a motion for failure to compel when you have
10 not provide [sic] proper discovery yourself [.]").

11 Now before the Court is Defendant's Motion to Compel Production of Initial
12 Disclosures and Request for Sanctions. (ECF No. 55).

13 **III. DISCUSSION**

14 **A. Local Rule 230**

15 Initially, Plaintiff argues that the motion to compel should be denied because
16 Defendants noticed it to be heard less than twenty-eight days after filing and serving it in
17 contravention of Local Rule 230. Generally, civil motions are to be noticed in accordance with
18 Local Rule 230. However, motions dealing with discovery matters are to be noticed in
19 accordance with Local Rule 251, which provides that a hearing of a discovery motion "may be
20 had by the filing and service of a notice of motion and motion scheduling the hearing date on
21 the appropriate calendar at least twenty-one (21) days from the date of filing and service."
22 Here, Defendants filed and served their motion to compel on November 7, 2017, and noticed it
23 to be heard on December 1, 2017. Thus, Defendants complied with the applicable local rule.

24 **B. Motion to Compel**

25 Rule 26 of the Federal Rules of Civil Procedure provides, in relevant part:

26 (a) Required Disclosures.

27 (1) Initial Disclosures.

28 (A) In General. Except as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must,

without awaiting a discovery request, provide to the other parties:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy--or a description by category and location--of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(iii) a computation of each category of damages claimed by the disclosing party--who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosures, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

(iv) for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Pursuant to Rule 26(a)(1)(c), the disclosing party must make its initial disclosures within fourteen days of the initial scheduling conference or at a time set by stipulation or court order.

“If a party fails to make a disclosures required by Rule 26(a), any other party may move to compel disclosures and for appropriate sanctions.” Fed. R. Civ. P. 37(a)(3)(A).

Plaintiff has not complied with his obligation to provide initial disclosures under Rule 26. Plaintiff represented to the Court he had done so, and even gave specific names he said he had disclosed to Defendants. But, the documents submitted by the parties show otherwise. Plaintiff submitted an email dated November 16, 2017, in which defense counsel wrote, “Thank you for your emails, however, you still have failed to produce the Initial Disclosures as required by FRCP 26, and the Court’s Order. The responses you are providing are to Special Interrogatories and Requests for Production of Documents, which are discovery requests, separate and distinct from the Initial Disclosures Requirement.” The email further states, “You need to provide responses to all of the special interrogatories. In addition, you must sign your responses, otherwise it is as if no responses were provided. Should I not receive full and complete responses by November 22, 2017, I will request the Court’s involvement in this

1 discovery dispute.” Plaintiff did not submit any document showing he had complied with his
2 initial disclosures, in email or otherwise.

3 The Court also reviewed Defendants’ supplemental submission. The almost sixty pages
4 of correspondence between the parties did not reveal any disclosures meeting the requirement
5 of Rule 26(a). It appears that Plaintiff did provide Defendants with responses to discovery
6 requests. It also appears that Plaintiff was told by Defendants on several occasions that these
7 responses did not constitute initial disclosures. In fact, an email correspondence sent by defense
8 counsel on November 7, 2017, stated:

9 You did not comply with your discovery obligations. You are
10 required pursuant to FRCP Rule 26 to make initial disclosures. I
11 have served the same to you, so you can see the form and
12 substance of what is required to be disclosed. You have not done
13 that. What you responded to were my written discovery requests,
14 consisting of Special Interrogatories and Requests for Production.
15 You have not properly responded to those either. . . . I will be
16 moving for sanctions for your failure to timely serve initial
17 disclosures, as well.

18 (ECF No. 64 at 49). In response, Plaintiff stated, “if you want me to copy and paste my reply to
19 your questions I may need a little more time than a week with trial dates so far off we still
20 should have time to get you what you need im [sic] not a atty [sic] I can repeat the info using
21 the docs already in place by copy and paste.” *Id.* at 48.

22 Thus, it appears that Plaintiff did not provide any initial disclosures.

23 More than five months have elapsed since the expiration of the initial disclosures
24 deadline in this case. Plaintiff was to provide initial disclosures by September 29, 2017, as
25 ordered in the Scheduling Order. (ECF No. 50). Plaintiff was given an extension of time to
26 November 6, 2017, to provide initial disclosures on October 23, 2017, with the Court
27 explaining in plain terms what was needed. (ECF No. 54). Plaintiff was further alerted to the
28 need to submit initial disclosures when Defendants filed their motion on November 7, 2017.
(ECF No. 55).

It is also worth noting that Plaintiff has prosecuted several cases in this District, in at
least one of which he was required to and did file initial disclosures. *See* Motion to Compel
Discovery and Initial Disclosure Pursuant to Federal Rules of Civil Procedure, Rule 26(a)(1),

1 *Sanders v. Aranas*, No. 1:06-CV-01574-AWI-SMS (E.D. Cal. Apr. 1, 2008), ECF Nos. 44, 45.
2 Plaintiff knows what is required of him, but has failed to do so, in violation of the Rules of
3 Civil Procedure and this Court’s order.

4 Moreover, Plaintiff misled the Court by saying at the hearing on this motion that he had
5 emailed initial disclosures including specific names of persons. This was not true.

6 **C. Sanctions**

7 **i. Legal Standard**

8 Federal Rule of Civil Procedure 37(c)(1) provides that if a party fails to provide
9 information as required by Rule 26(a) the court may impose appropriate sanctions, including
10 dismissing the action in whole or in part. District courts have “particularly wide latitude” to
11 issue sanctions under Rule 37(c)(1). *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843,
12 859 (9th Cir. 2014). Nevertheless, the Court must consider five factors before imposing a
13 terminating sanction: “(1) the public’s interest in expeditious resolution of litigation; (2) the
14 court’s need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4)
15 the public policy favoring disposition of cases on their merits; and (5) the availability of less
16 drastic sanctions.” *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). This multi-
17 factor test is “not mechanical,” *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482
18 F.3d 1091, 1096 (9th Cir. 2007), and the court “need not make explicit findings regarding each
19 of these factors,” *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006). Rather, the test
20 “provides the district court with a way to think about what to do, not a set of conditions
21 precedent for sanctions or a script that the district court must follow.” *Conn. Gen. Life Ins. Co.*,
22 482 F.3d at 1096.

23 Courts may also impose sanctions, including terminating sanctions, as part of their
24 inherent power “to manage their own affairs so as to achieve the orderly and expeditious
25 disposition of cases” or based on a failure to comply with court orders. *Chambers v. NASCO,*
26 *Inc.*, 501 U.S. 32, 43 (1991); *Pagtalunan v. Galazza*, 291 F.3d 639, 642 (9th Cir. 2002). A
27 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
28 court order, or failure to comply with local rules. Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 41(b);

1 L.R. 110; *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *United States v. Warren*, 601
2 F.2d 471, 474 (9th Cir. 1979)) (dismissal for noncompliance with local rule); *Malone v. United*
3 *States Postal Serv.*, 833 F.2d 128, 134 (9th Cir. 1987) (dismissal for failure to comply with
4 court order). The Ninth Circuit has held that the same five-factor test utilized in the context of
5 Rule 37 sanctions applies. *Leon*, 464 F.3d at 958 n. 4; *Pagtalunan*, 291 F.3d at 642.

6 **ii. Analysis**

7 This action has been pending for three years. The Court has set two deadlines for
8 Plaintiff to provide his initial disclosures, both of which have long passed. The Court has twice
9 scheduled hearings in which it explained to Plaintiff his obligation to provide his initial
10 disclosures. Still, Plaintiff has failed to provide the disclosures. On the contrary, Plaintiff has
11 been deceptive with this Court by falsely saying he had sent information. Plaintiff's apparent
12 unwillingness to comply with the Federal Rules, the Court's order, and his own assurances all
13 demonstrate that further time spent on this case will consume scarce judicial resources in vain.
14 Non-expert discovery is coming to a close, (ECF No. 50), yet Plaintiff has not complied with
15 the very first discovery obligation of identifying relevant persons and documents. Thus, the
16 first two factors weigh in favor of dismissal.

17 The third factor—the risk of prejudice to the party seeking sanctions—requires a
18 showing that Plaintiff's actions in this case has “impaired [the defendants'] ability to proceed to
19 trial or threatened to interfere with the rightful decision of the case.” *United States ex rel.*
20 *Wiltec Guam, Inc. v. Kahaluu Constr. Co.*, 857 F.2d 600, 604 (9th Cir.1988). “Prejudice is
21 presumed from unreasonable delay,” however. *In re Phenylpropanolamine (PPA) Prod. Liab.*
22 *Litig.*, 460 F.3d 1217, 1238 (9th Cir. 2006). Here, Defendants are prejudiced by Plaintiff's
23 unreasonable delay in providing his initial disclosures. The September 29, 2017 deadline for
24 initial disclosures has expired. The extended deadline, November 6, 2017, has also expired.
25 The April 20, 2018 deadline for non-expert discovery is fast approaching. Still, Defendants are
26 left without basic preliminary information to defend this action. Thus, this factor also weighs in
27 favor of dismissal.

28 The fifth factor requires the Court to consider alternate, less severe, sanctions before

1 ordering dismissal. Factor 5 involves consideration of three subparts: “whether the court
2 explicitly discussed alternative sanctions, whether it tried them, and whether it warned the
3 recalcitrant party about the possibility of dismissal.” *Valley Engineers Inc. v. Elec. Eng'g Co.*,
4 158 F.3d 1051, 1057 (9th Cir. 1998) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 132
5 (9th Cir. 1987)). However, the Ninth Circuit has determined that a court’s warning to a party
6 that his failure to obey the court’s order will result in dismissal can satisfy the “consideration of
7 alternatives” requirement. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). As the
8 Ninth Circuit has explained, “a plaintiff can hardly be surprised” by a sanction of dismissal “in
9 response to willful violation of a pretrial order.” *Malone v. U.S. Postal Service*, 833 F.2d 128,
10 133 (9th Cir. 1987).

11 The Court has tried alternatives to secure compliance with litigation procedures. The
12 Court held an informal discovery dispute conference on October 12, 2017. During the
13 conference, the Court explained Plaintiff’s obligation to produce initial disclosures, and warned
14 Plaintiff that Defendants would be able to file a motion for sanctions if he did not comply. The
15 Court then extended Plaintiff’s time to provide initial disclosures. Plaintiff agreed to provide
16 initial disclosures by the close of business on November 6, 2017. Plaintiff did not do so, and
17 still has not done so. Thus, the fifth factor weighs in favor of dismissal.

18 “The fourth factor—that public policy favors decisions on the merits—usually weighs
19 against dismissal.” *Hyde & Drath v. Baker*, 24 F.3d 1162, 1167 (9th Cir. 1994), as amended
20 (July 25, 1994). The fourth factor “lends little support to a party whose responsibility it is to
21 move a case toward disposition on the merits but whose conduct impedes progress in that
22 direction,” however. *In re Phenylpropanolamine (PPA) Prods. Liability Litig.*, 460 F.3d 1217,
23 1228 (9th Cir. 2006). Plaintiff’s failure to provide initial disclosures has impeded progress of
24 this case. Thus, the Court gives this factor little weight.

25 Plaintiff’s dishonesty also favors the sanction of dismissal in this case. Plaintiff was
26 dishonest with the Court when he said he had already provided initial disclosures including the
27 names of specific persons. Plaintiff was dishonest with his opposing counsel when he
28 represented his name was Doug Jones when he called counsel’s office. This dishonest conduct

1 casts further doubt on Plaintiff's ability to follow the rules of this Court.

2 Four of the five factors strongly favor dismissal of this action. The Court takes the
3 sanction of dismissal very seriously and would not recommend it lightly, especially as a
4 sanction for a failure to provide discovery. However, the Court believes that it is the
5 appropriate sanction here. Plaintiff has failed to comply with the rules or show any willingness
6 to do so in the future. He has ignored rules and court orders and then lied about it. He has not
7 completed the very initial stage of discovery in order to go forward with the case. Accordingly,
8 the Court finds that sanctions are justified, and recommends granting Defendants' motion for
9 terminating sanctions with prejudice. *See Hernandez v. City of El Monte*, 138 F.3d 393, 399
10 (9th Cir.1998) (finding dismissal is proper "where at least four factors support dismissal or
11 where at least three factors 'strongly' support dismissal"); *see also Dreith v. Nu Image, Inc.*,
12 648 F.3d 779, 787 (9th Cir. 2011) (upholding terminating sanctions for party's failure to
13 comply with court orders and failure to adhere to scheduled dates for initial disclosures); *BWP*
14 *Media USA Inc. v. Urbanity, LLC*, 696 F. App'x 795, 797 (9th Cir. 2017) (upholding imposition
15 of sanction "tantamount to dismissing" action for party's failure to provide initial disclosures);
16 *Flanagan v. Benicia Unified Sch. Dist.*, No. CIVS07-0333 LKK GGH, 2008 WL 2073952, at
17 *10 (E.D. Cal. May 14, 2008), *report and recommendation adopted*, No. CIV-S-07-
18 0333LKKGGH, 2008 WL 4353077 (E.D. Cal. Sept. 23, 2008), *aff'd*, 404 F. App'x 187 (9th Cir.
19 2010), *and aff'd*, 404 F. App'x 187 (9th Cir. 2010) (granting motion to compel and for sanctions
20 for failure to provide complete initial disclosures, and recommending dismissal); *Silva v.*
21 *United States*, No. 2:12-CV-01785-LKK, 2013 WL 6145252, at *7 (E.D. Cal. Nov. 21, 2013)
22 (recommending dismissal of action as discovery sanction in light of party's failure to provide
23 initial disclosure and failure to comply with court orders); *Ramirez v. Bakersfield Police Dep't*,
24 No. 1:14-CV-00978-JLT, 2015 WL 6447267, at *3 (E.D. Cal. Oct. 23, 2015) (dismissing
25 action for failure to comply with court orders to provide initial disclosures).

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1 **IV. CONCLUSION AND RECOMMENDATION**

2 For the foregoing reasons, IT IS HEREBY RECOMMENDED that Defendants’ motion
3 to compel and for sanctions, (ECF No. 55), be granted to the extent that this action should be
4 dismissed for Plaintiff’s failure to provide initial disclosures and failure to comply with court
5 orders. *See* Fed. R. Civ. 16(f); Fed. R. Civ. P. 37(c)(1)(C), (b)(2)(A)(v); Fed. R. Civ. P. 41(b);
6 L.R. 110.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30)**
9 **days** after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
12 objections shall be served and filed within fourteen days after service of the objections.

13 Failure to file objections within the specified time may result in the waiver of rights on
14 appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*,
15 923 F.2d 1391, 1394 (9th Cir. 1991)).

16 IT IS SO ORDERED.
17

18 Dated: March 26, 2018

18 /s/ Eric P. Groj
19 UNITED STATES MAGISTRATE JUDGE