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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CIV S-10-2644 LKK DAD

v.

LCL ADMINISTRATORS, INC.,
ELEANOR J. GOOD, and
LORETTA A. MIGLIORI,

Defendants.

ORDER

_____/

This case came before the court on April 22, 2011, for hearing of plaintiff’s motion to compel initial disclosures and for sanctions (Doc. No. 23). Adair Ford Boroughs, Esq. appeared for plaintiff. Matthew D. Pearson, Esq. appeared for defendants.

Plaintiff’s counsel advised the court that defendants’ initial disclosures were provided to her 45 minutes prior to the scheduled hearing time, rendering the motion to compel moot. Plaintiff requested costs for bringing the motion. The court directed counsel to file a declaration in support of costs, and such a declaration was timely filed on April 26, 2011.

“If a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions.” Fed. R. Civ. P. 37(a)(3)(A). “If the motion is granted – or if the disclosure . . . is provided after the motion was filed – the court

1 must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated
2 the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable
3 expenses incurred in making the motion, including attorney fees." Fed. R. Civ. P. 37(a)(5)(A).

4 Here, the motion to compel reflects that plaintiff attempted in good faith to obtain
5 defendants' initial disclosures before filing a motion to compel them. See Pl.'s Mot. to Compel
6 (Doc. No. 23) at 2; Fed. R. Civ. P. 37(a)(5)(A)(i). Defendants did not file written opposition to
7 plaintiff's motion and acknowledged at the hearing that the initial disclosures were long overdue.
8 Counsel's vague reference to "a breakdown on our end" does not constitute substantial
9 justification for the delay. See Fed. R. Civ. P. 37(a)(5)(A)(ii). The court finds no other
10 circumstance that makes an award of expenses unjust. See Fed. R. Civ. P. 37(a)(5)(A)(iii).

11 The Declaration of Adair Boroughs (Doc. No. 26) documents motion-related costs
12 of \$703.16. This amount includes \$356.00 for two hours of attorney time at \$178 per hour. The
13 rate is the \$125.00 rate authorized in the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(2)(A),
14 as adjusted for inflation. The amount also includes \$347.16 for travel costs, which plaintiff
15 apportioned among the hearing on the motion to compel and three depositions taken during the
16 three days that preceded the motion hearing. The travel costs are comprised of one fourth of the
17 cost of airfare from Washington, D.C. (\$105.20), one fourth of the hotel expense (\$115.47), one
18 fourth of the car rental (\$53.49), parking at the courthouse on the day of the hearing (\$12.00), and
19 one day of per diem (\$61.00). However, as indicated at the hearing, the undersigned declines to
20 award travel costs in light of the fact that plaintiff's counsel could have appeared telephonically
21 for hearing of the unopposed motion and because counsel's travel was apparently necessitated, in
22 part, by other scheduled hearings and depositions.

23 Good cause appearing, IT IS ORDERED that:

24 1. Plaintiff's unopposed motion to compel initial disclosures and for sanctions
25 (Doc. No. 23) is denied as moot with regard to the motion to compel and granted as to the motion
26 for sanctions;

