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

CD ALSTON,

Plaintiff,

No. CIV S-11-2079 JAM EFB PS

vs.

CITY OF SACRAMENTO;
SACRAMENTO CITY POLICE
DEPARTMENT; RICK BRAZIEL;
OFFICER PETERSON; SECURITY
GUARD SCOTT; OFFICER J. MEIGR;
OFFICER STEWART; SUPERVISING
SERGEANT ON SITE; and
DOES 1 to 10;

Defendants.

ORDER

On April 24, 2012, defendants City of Sacramento, Rick Braziel, Jason Meier, Andrew Stewart, Erin Peterson, and Dan Farnsworth filed a motion to compel plaintiff to provide her initial disclosures, as required by Federal Rule of Civil Procedure 26(a), as well as a request for \$150.00 in sanctions. Dckt. No. 34. The motion was noticed for hearing on May 30, 2012. *Id.* On April 25, 2012, defendant Scott Fletcher (sued as Security Guard Scott) joined in the motion. Dckt. No. 35.

Because plaintiff has completely failed to respond to defendants' requests that she provide her initial disclosures and to the order requiring that initial disclosures be provided by

1 March 16, 2012, Dckt. No. 33 at 4, Eastern District of California Local Rule 251(e) applies. *See*
2 E.D. Cal. L.R. 251(e) (providing that the requirement that the parties file a Joint Statement re
3 Discovery Disagreement does not apply “when there has been a complete and total failure to
4 respond to a discovery request or order”). Under Local Rule 251(e), a responding party must file
5 a response to the discovery motion at issue no later than seven days before the hearing date, or in
6 this instance, by May 23, 2012.

7 The deadline has passed and plaintiff has not filed a response to defendants’ motion.
8 Therefore, plaintiff will not be entitled to be heard on the motion, and the hearing on the motion
9 will be vacated.

10 Federal Rule of Civil Procedure 37(a)(3)(A) provides that “[i]f a party fails to make a
11 disclosure required by Rule 26(a), any other party may move to compel disclosure and for
12 appropriate sanctions.” Fed. R. Civ. P. 37(a)(3)(A). Defendants’ motion provides that plaintiff
13 still has not served defendants with her initial disclosures, even though plaintiff was ordered to
14 provide them on or before March 16, 2012 and defendants requested that plaintiff do so.
15 Chapman Decl., Dckt. No. 34-2, ¶¶ 2-3; *see also* Dckt. No. 33 at 4. Nor has plaintiff provided
16 any valid excuse the failure to do so since plaintiff failed to respond to the motion to compel.
17 Accordingly, defendants’ motion to compel will be granted, and plaintiff will be ordered to
18 provide defendants with her initial disclosures within fourteen days.

19 Defendants also request that they be awarded \$150.00 for the reasonable expenses and
20 attorney’s fees they incurred by filing the motion to compel. Dckt. No. 34 at 1. Rule
21 37(a)(5)(A) provides that if a motion to compel is granted, the court must require the party
22 whose conduct necessitated the motion to pay the movant’s reasonable expenses incurred in
23 making the motion. Fed. R. Civ. P. 37(a)(5)(A). Additionally, Rule 37(b)(2)(C) provides that a
24 party who fails to comply with a court’s discovery order must pay the reasonable expenses
25 caused by that failure. Fed. R. Civ. P. 37(b)(2)(C). However, Rules 37(a)(5)(A)(iii) and
26 37(b)(2)(C) also provide that a court should not require the payment of expenses if the

1 “circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A)(iii); Fed. R. Civ.
2 P. 37(b)(2)(C). Although plaintiff has provided no justification for her failure to timely provide
3 her initial disclosures to defendants, in light of plaintiff’s *pro se* and *in forma pauperis* status, the
4 court declines to award expenses at this time. However, plaintiff is admonished that failure to
5 comply with this order and/or failure to comply with future orders, the Local Rules, or the
6 Federal Rules of Civil Procedure may result in the imposition of sanctions, including dismissal
7 of this action.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Defendants’ motion to compel plaintiff to provide her initial disclosures, as required
10 by Federal Rule of Civil Procedure 26(a), Dckt. No. 34, is granted, and the May 30, 2012
11 hearing thereon is vacated.

12 2. Within fourteen days of the date of this order, plaintiff shall serve defendants with her
13 initial disclosures, as required by Federal Rule of Civil Procedure 26(a).

14 3. Plaintiff is admonished that failure to comply with this order and/or continued failures
15 to comply with the Local Rules and/or the Federal Rules of Civil Procedure may result in the
16 imposition of sanctions, including monetary sanctions and/or terminating sanctions. *See* E.D.
17 Cal. L.R. 110; Fed. R. Civ. P. 37(b)(2).

18 SO ORDERED.

19 DATED: May 25, 2012.

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EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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