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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES ROMERO,
Plaintiff,
v.
M.E. SPEARMAN, et al.,
Defendants.

No. 2:18-cv-1590 DJC AC

ORDER

Defendants have moved to compel plaintiff’s deposition. ECF No. 40. They represent that plaintiff failed to appear for his noticed deposition and failed to contact defendants’ counsel. Defendants seek an order compelling plaintiff’s attendance at a second deposition or, alternatively, terminating sanctions. They also request an order compelling plaintiff to bear the costs of completing his deposition. Id.

It is not subject to dispute that plaintiff must attend his properly noticed deposition and answer the questions put to him. It is also clear that terminating sanctions are an appropriate consequence for failure to participate in discovery. Before ruling on the motion to compel, however, the court will direct plaintiff to respond to the motion, specifically addressing the issues of sanctions and costs, and affirming his intention to prosecute this lawsuit.

The court notes that defense counsel refers to plaintiff as a parolee and has been communicating with (or attempting to communicate with) plaintiff using a community address

1 and a phone number provided to counsel by the litigation coordinator at the California Substance
2 Abuse Treatment Facility. See ECF No. 40-4. Counsel has been using a non-institutional address
3 for plaintiff since December 2022. See ECF No. 40-2. The only address for plaintiff on the
4 court's docket is the CSATF, where plaintiff was last incarcerated. Plaintiff has taken no action
5 in this case since May 31, 2022.¹ It appears that plaintiff has failed to comply with Local Rule
6 183(b), which requires that a party appearing in propria persona inform the court of any address
7 change. It further appears that plaintiff may have abandoned the case.

8 Accordingly, IT IS HEREBY ORDERED as follows:

- 9 1. No later than 21 days from the date of this order, plaintiff shall file both:
 - 10 a. A notice of change of address, and
 - 11 b. A response to defendants' motion to compel his deposition;
- 12 2. Plaintiff's response to the motion shall affirmatively indicate whether or not he intends to
13 pursue this case, and shall address:
 - 14 a. Defendants' request for costs pursuant to Fed. R. Civ. P. 37(c)(5), and
 - 15 b. Defendants' request for terminating sanctions (i.e., dismissal as a sanction for
16 failing to participate in discovery);
- 17 3. The Clerk of Court is directed to serve this order on plaintiff by mail both at the address of
18 record and at 762 Griswold Avenue, San Fernando, California, 91340;
- 19 4. Plaintiff's failure to timely respond to this order will result in a recommendation that this
20 case be dismissed.

21 DATED: June 28, 2023

22 
23 ALLISON CLAIRE
24 UNITED STATES MAGISTRATE JUDGE

25 _____
26 ¹ On that date, plaintiff filed a notice indicating an intent to amend the complaint a second time.
27 ECF No. 23. No amended complaint was ever filed, and it was accordingly ordered that the case
28 proceed solely on the single claim of the first amended complaint that had been found on
screening to state a claim. ECF Nos. 25, 26. Service was subsequently accomplished, defendant
opted out of ADR, and the case was scheduled.