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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PERCY HILL also known as  
PERCY EDWIN STOCKTON,  
  
Plaintiff,  
  
v.  
ALPINE SHERIFF  
DEPARTMENT, et al.,  
  
Defendants.

Case No.: 18cv2470-CAB-MDD

**ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
RULE 37 SANCTIONS AGAINST  
PLAINTIFF**

[ECF No. 22]

On January 30, 2019, Plaintiff Percy Hill (“Plaintiff”), proceeding *pro se*, filed the operative Second Amended Complaint against Defendants County of San Diego, Eric Garcia, Cathy Allister, Freddy Herrero, Matthew Addenbrooke, and Officer Balinger (collectively, “Defendants”). (ECF No. 8, hereinafter “SAC”). On September 9, 2019, Defendants County of San Diego, Eric Garcia, Cathy Allister, Freddy Herrero, and Matthew Addenbrooke (collectively, “moving Defendants”)<sup>1</sup> filed the instant motion for sanctions

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<sup>1</sup> Officer Balinger has not appeared in this action. (*See* Docket).

1 against Plaintiff pursuant to Federal Rule of Civil Procedure 37. (ECF No.  
2 22, hereinafter “Mtn”). Plaintiff filed an untimely opposition on October 11,  
3 2019. (ECF No. 30, hereinafter “Oppo.”). The matter was set for hearing on  
4 October 21, 2019 and both parties appeared. (ECF No. 31). For the reasons  
5 stated herein, the Court **GRANTS IN PART** moving Defendants’ motion.

### 6 I. RELEVANT BACKGROUND

7 On March 4, 2019, the Court ordered the parties to “make the initial  
8 disclosures required by Fed.R.Civ.P. 26(a)” on or before April 17, 2019. (ECF  
9 No. 12). The Court held an Early Neutral Evaluation (“ENE”) and Case  
10 Management Conference (“CMC”) on April 24, 2019. (See ECF No. 13).

11 On August 1, 2019, the parties filed a joint motion for determination of  
12 a discovery dispute. (ECF No. 20). Moving Defendants requested Plaintiff be  
13 compelled to produce his initial disclosures that were due pursuant to the  
14 Court’s order on or before April 24, 2019. (*Id.* at 1-2). Plaintiff explained he  
15 thought his motion for extension of time filed May 13, 2019, which was  
16 granted, extended the deadline for disclosures. (*Id.* at 2-3). However,  
17 Plaintiff’s motion for an extension of time did not seek an extension of the  
18 initial disclosures. (See ECF No. 15). Accordingly, on August 2, 2019, the  
19 Court ordered Plaintiff to serve his initial disclosures on moving Defendants  
20 no later than August 12, 2019. (ECF No. 21). The Court further noted that  
21 Plaintiff must properly serve all discovery requests upon Defendants in  
22 accordance with the applicable rules. (*Id.* at 2).

23 On September 9, 2019, moving Defendants filed the instant motion  
24 requesting the Court impose sanctions upon Plaintiff for failing to serve his  
25 initial disclosures as ordered by the Court on two occasions. (Mtn. at 2). The  
26 Court ordered Plaintiff to file an opposition to Defendants’ motion, if any, by  
27 September 27, 2019. (ECF No. 24). On September 30, 2019, the Court set

1 the matter for hearing for October 21, 2019 and noted that Plaintiff had not  
2 yet filed an opposition. (ECF No. 29). On October 11, 2019, Plaintiff filed a  
3 response in opposition to Defendants’ motion. (Oppo.).

## 4 II. LEGAL STANDARD

5 Federal Rule of Civil Procedure 26(a)(1) requires a party “without  
6 awaiting a discovery request,” to provide the other parties, as relevant here:

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

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

17 (iii) a computation of each category of damages claimed by the  
18 disclosing party—who must also make available for inspection and  
19 copying as under Rule 34 the documents or other evidentiary  
20 material, unless privileged or protected from disclosure, on which  
21 each computation is based, including materials bearing on the  
22 nature and extent of injuries suffered[.]

18 Fed. R. Civ. P. 26(a)(1)(A)(i)-(iii).

19 Federal Rule of Civil Procedure 37(a)(3)(A) permits a party to seek  
20 sanctions when the other party fails to provide Rule 26(a) initial disclosures.

21 Further:

22 [if] a party fails to provide information . . . as required by Rule 26(a)  
23 . . . the party is not allowed to use that information . . . to supply  
24 evidence on a motion, at a hearing, or at a trial, unless the failure  
25 was substantially justified or is harmless. In addition to or instead  
26 of this sanction, the court, on motion and after giving an  
27 opportunity to be heard . . . may order payment of the reasonable  
expenses, including attorney’s fees, caused by the failure.

27 Fed. R. Civ. P. 37(c)(1)(A).

### III. ANALYSIS

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2 Moving Defendants request the Court sanction Plaintiff for his failure  
3 to serve his initial disclosures by imposing terminating sanctions, excluding  
4 evidence not disclosed, or holding Plaintiff in contempt. (Mtn. at 2-5).  
5 Additionally, they request Plaintiff be required to pay their reasonable  
6 attorneys' fees associated with this motion. (*Id.* at 6). Plaintiff argues he was  
7 not required to serve his initial disclosures because he is only relying on the  
8 evidence he filed with his complaint. (Oppo. at 2). Plaintiff also attached  
9 motions requesting discovery. (*Id.* at 3-6).

#### **A. Initial Disclosures**

10  
11 Based on the factual background of this dispute, it is clear that Plaintiff  
12 failed to comply with the plain language of two of the Court's orders directing  
13 him to provide initial disclosures to moving Defendants. Plaintiff argues he  
14 was not required to serve initial disclosures upon moving Defendants because  
15 he attached all the evidence he intends to rely upon to his complaint. (Oppo.  
16 at 2). However, referencing the complaint is insufficient under Rule 26  
17 because the complaint contains only allegations, whereas discovery is meant  
18 to provide verified factual information for use at trial or to support or oppose  
19 a motion. *See Davis v. Molina*, No. 1:14-cv-01554 LJO DLB PC, 2016 U.S.  
20 Dist. LEXIS 53031, at \*6 (E.D. Cal. Apr. 19, 2016) (finding a plaintiff was not  
21 substantially justified in failing to provide initial disclosures to defendants  
22 and instead referring defendants to his initial pleadings and their  
23 attachments); *Holak v. Kmart Corp.*, No. 1:12-cv-00304 AWI MJS, 2014 U.S.  
24 Dist. LEXIS 78472, at \*47-18 (E.D. Cal. June 5, 2014) ("Plaintiff's reference  
25 to [']putative class members, as alleged in the operative complaint' is  
26 insufficient disclosure under Rule 26 . . ."); *Hash v. Cate*, No. C 08-03729  
27 MMC (DMR), 2012 U.S. Dist. LEXIS 172715, at \*10 (N.D. Cal. Dec. 5, 2012)

1 (“Plaintiff may not refer to his complaint, because statements in a complaint  
2 are just allegations . . .”). As a result, Plaintiff was not substantially  
3 justified for his non-disclosure.

4 Plaintiff further fails to meet his burden of showing that his failure to  
5 disclose was harmless, except with respect to witnesses listed in an affidavit  
6 attached to his original complaint. Plaintiff attached as Exhibit A to his  
7 original complaint an affidavit of “Paul Littech, Rick Freeman, Cheryl  
8 Bausch, Jim Browning, Michelle Johnson, and Clifford Rhodes” relating to  
9 the incident giving rise to Plaintiff’s claims. (ECF No. 1-2). This affidavit  
10 also mentions a Linda Montgomery, who is also listed in the Second Amended  
11 Complaint. (*Id.* at 44; ECF No. 8 at 2). At the hearing, the Court noted that  
12 had Plaintiff disclosed these same names to moving Defendants, but did not  
13 have their addresses or contact information, moving Defendants would be in  
14 the same position they are in today. The Court also noted that many of these  
15 persons were interviewed by moving Defendants, which suggests they have  
16 last known addresses of these persons. For these reasons, the Court finds  
17 that Plaintiff’s non-disclosure of “individual[s] likely to have discoverable  
18 information” pursuant to Rule 26(a)(1)(A)(i) is harmless.

19 However, Plaintiff failed to provide Defendant with any documents, or  
20 list describing documents, which he may use to support his allegation in the  
21 complaint of any computation of damages. Moving Defendants cannot be  
22 expected to guess the documents Plaintiff may use to prove his allegations.  
23 Merely referencing the complaint in this instance undermines the very  
24 purpose of providing initial disclosures. Moreover, the Second Amended  
25 Complaint is completely devoid of any specific computation of damages and  
26 moving Defendants have no way of guessing what Plaintiff’s computation of  
27 each category of damages sought is. The substantial time and resources

1 expended by moving Defendants and the Court addressing this issue could  
2 have easily been avoided if Plaintiff simply provided moving Defendants with  
3 his initial disclosures as required by two Court orders. Accordingly,  
4 Plaintiff's non-disclosure of documents or a list describing documents he may  
5 use to support his claims and a computation of each category of damages  
6 pursuant to Rule 26(a)(1)(A)(ii)-(iii) is not harmless. Therefore, Plaintiff "is  
7 not allowed to use that information . . . to supply evidence on a motion, at a  
8 hearing, or at a trial." Fed. R. Civ. P. 37(c)(1)(A).

9 ***B. Attorneys' Fees***

10 Moving Defendants also request sanctions under Rule 37 in the amount  
11 of \$1,518<sup>2</sup> for counsels' time spent on tasks related to the instant motion.  
12 (Mtn. at 6). Plaintiff did not respond to this request in his opposition. (*See*  
13 *Oppo.*). At the hearing, Plaintiff voiced his disagreement with the imposition  
14 of monetary sanctions. Thus, Plaintiff had two opportunities to be heard  
15 regarding moving Defendants' request for sanctions. However, as indicated  
16 previously, Plaintiff provided no justification for failing to make the Rule  
17 26(a)(1) initial disclosures, despite being ordered to serve his initial  
18 disclosures on two occasions. As a result, the Court finds that moving  
19 Defendants are entitled to sanctions for the fees incurred by bringing the  
20 instant motion.

21 Senior Deputy County Counsel Sylvia S. Aceves, avers that County  
22 Counsel expended 6 hours of attorney time in drafting this motion at a cost of  
23 \$1,518. (ECF No. 22-2 at 2). She further declares that the billing rate is  
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26 <sup>2</sup> Moving Defendants' initially requested \$2,277 because they anticipated incurring 3  
27 hours in preparing a reply brief. (*See* Mtn. at 6). However, moving Defendants did not file  
a reply brief. (*See* Docket).

1 \$253 per hour. (*Id.*). The Court finds that the \$1,518 in fees described in Ms.  
2 Aceves declaration is reasonable and that it is appropriate to order Plaintiff  
3 to pay moving Defendants the amount of \$1,518 for his refusal to comply with  
4 the Federal Rules of Civil Procedure, and two Court orders. *See Yeti by*  
5 *Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001)  
6 (“[W]e give particularly wide latitude to the district court’s discretion to issue  
7 sanctions under Rule 37(c)(1).”).

### 8 ***C. Plaintiff’s Discovery Requests***

9 In opposition to moving Defendants’ motion, Plaintiff also seeks “the  
10 body worn camera of police dog Edo” and a copy of the “body worn camera  
11 footage of the entire incident” with audio. (Oppo. at 3-6). He also asks that  
12 “no evidence in this case . . . be disallowed, and that all documents and body  
13 worn camera evidence . . . be used as evidence and not barred from being  
14 used as said evidence.” (*Id.* at 5). As indicated previously and as explained  
15 at the hearing, Plaintiff must properly serve all discovery requests upon  
16 Defendants in accordance with the applicable rules. (*See* ECF No. 21 at 2).  
17 As such, the Court Court **DENIES** Plaintiff’s requests for discovery. (*See*  
18 Oppo. at 3-6).

### 19 **III. CONCLUSION**

20 Based on the foregoing, the Court **GRANTS IN PART** moving  
21 Defendants’ motion for sanctions as follows:

22 1. Plaintiff is precluded from using witnesses other than Paul  
23 Littech, Rick Freeman, Cheryl Bausch, Jim Browning, Michelle Johnson, and  
24 Clifford Rhodes and Linda Montgomery to supply evidence on a motion, at a  
25 hearing, or at a trial, unless the use would be solely for impeachment

26 2. Plaintiff is precluded from using documents, electronically stored  
27 information, and tangible things in his possession, custody, or control, to

1 support his claims or defenses, to supply evidence on a motion, at a hearing,  
2 or at a trial, unless the use would be solely for impeachment;


3 3. Plaintiff is precluded from using a computation of each category of  
4 damages claimed to supply evidence on a motion, at a hearing, or at a trial;  
5 and

6 4. Plaintiff must pay the County of San Diego \$1,518.00 no later  
7 than **November 25, 2019**.

8 Any party may serve and file objections to this Order on or before  
9 **November 8, 2019**.<sup>3</sup>

10 **IT IS SO ORDERED.**

11 Dated: October 22, 2019

12   
13 Hon. Mitchell D. Dembin  
14 United States Magistrate Judge

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26 <sup>3</sup> Federal Rule of Civil Procedure 72(a) permits a party to file objections “to the order  
27 *pro se*, the Court has included 3 days for mailing. As such, any opposition by Plaintiff  
must be filed and on the docket by November 8, 2019.