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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 IVAN MOSLEY,

12 Plaintiff,

13 v.

14 CARLOS DEL TORO, Secretary of the
15 Navy, Department of the Navy,

16 Defendant.

Case No.: 21-cv-01129-TWR-JLB

**ORDER GRANTING MOTION TO
COMPEL PLAINTIFF'S
DEPOSITION AND RELEASE OF
RECORDS**

[ECF No. 51]

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18 Before the Court is a Motion to Compel Plaintiff's Deposition and Release of
19 Records filed by Defendant Carlos Del Toro ("Defendant"). (ECF No. 51.) Defendant
20 seeks an order compelling Plaintiff Ivan Mosley ("Plaintiff") to appear for a deposition at
21 a date and time to be noticed by Defendant pursuant to Federal Rule of Civil Procedure
22 37(a)(3)(B)(i). (*Id.* at 2.) Defendant also seeks an order compelling Plaintiff to execute a
23 release of records relating to his applications for Social Security disability and
24 Supplemental Security Income ("SSI"). (*Id.*) Plaintiff did not file an opposition.¹
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27 ¹ See CivLR 7.1(f)(3)(c) ("If an opposing party fails to file [an opposition] in the
28 manner required by Civil Local Rule 7.1.e.2, that failure may constitute a consent to the
granting of a motion or other request for ruling by the Court.").

1 Defendant filed a reply. (ECF No. 57.) The Court held a hearing on the Motion to Compel
2 on July 13, 2023. (ECF No. 58.) Plaintiff did not appear. For the reasons set forth below,
3 Defendant’s Motion to Compel is **GRANTED**.

4 **I. BACKGROUND**

5 Plaintiff commenced this action on June 17, 2021. (ECF No. 1.) On
6 October 3, 2022, plaintiff filed a Second Amended Complaint,² the operative complaint,
7 alleging harassment and retaliation in violation of Title VII of the Civil Rights Act of 1964.
8 (ECF No. 26.) Plaintiff, an African American man, alleges that Defendant and his
9 employees discriminated against him and harassed him because of his race while he was
10 employed as a civilian cook/chef at the Navy facility known as the Admiral Kidd Club
11 (“AKC”). (*Id.* ¶¶ 2, 15.) Defendant further alleges that Defendant’s management retaliated
12 against him for having complained about such discrimination. (*Id.* ¶ 2.) Plaintiff was
13 employed by the AKC from June 2, 2011, until he was terminated on August 20, 2017.
14 (*Id.* ¶¶ 16, 23–25.) Plaintiff seeks general damages, compensatory damages, and special
15 damages, “including but not limited to back pay, front pay, moving expenses, and other
16 related costs,” as well as attorney’s fees, costs, and interest. (*Id.* ¶¶ 40–44.)

17 **II. LEGAL STANDARD**

18 **A. Motion to Compel**

19 Federal Rule of Civil Procedure 26 authorizes parties to obtain discovery regarding
20 any nonprivileged matter that is relevant to any claim or defense and proportional to the
21 needs of the case, “considering the importance of the issues at stake in the action, the
22 amount in controversy, the parties’ relative access to relevant information, the parties’
23 resources, the importance of the discovery in resolving the issues, and whether the burden
24 or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.
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27 ² Although captioned “First Amended Complaint,” the complaint filed on
28 October 3, 2022, is Plaintiff’s Second Amended Complaint. He previously filed a First
Amended Complaint on February 25, 2022. (*See* ECF No. 14.)

1 26(b)(1). District courts have broad discretion to determine relevancy for discovery
2 purposes. *See Surfivivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. 2005)
3 (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).

4 Federal Rule of Civil Procedure 30 authorizes a party to depose “any person,
5 including a party, without leave of court” by oral questions by giving “reasonable written
6 notice to every other party.” Fed. R. Civ. P. 30(a)(1), (b)(1).

7 Federal Rule of Civil Procedure 37 enables the propounding party to bring a motion
8 to compel an answer, designation, production, or inspection. Fed. R. Civ. P. 37(a)(3)(B).
9 The party seeking to compel discovery has the burden of establishing that its request
10 satisfies the requirements of Rule 26(b). *Soto v. City of Concord*, 162 F.R.D. 603, 610
11 (N.D. Cal. 1995). “The party who resists discovery has the burden to show that discovery
12 should not be allowed, and has the burden of clarifying, explaining, and supporting its
13 objections.” *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002).

14 **B. Pro Se Litigants**

15 “In general, *pro se* representation does not excuse a party from complying with a
16 court’s orders and with the Federal Rules of Civil Procedure.” *Hupp v. San Diego Cnty.*,
17 No. 12-cv-00492 GPC (RBB), 2014 WL 1404510, at *2 (S.D. Cal. Apr. 10, 2014) (quoting
18 *Ackra Direct Mktg. Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996)).
19 Accordingly, parties who represent themselves are expected to follow the rules of the court
20 in which they litigate. *Bias v. Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (quoting
21 *Carter v. Comm’r*, 784 F.2d 1006, 1008 (9th Cir. 1986)). “[W]hile *pro se* litigants may be
22 entitled to some latitude when dealing with sophisticated legal issues, acknowledging their
23 lack of formal training, there is no cause for extending this margin to straightforward
24 procedural requirements that a layperson can comprehend as easily as a lawyer.” *Dewidar*
25 *v. Nat’l R.R. Passenger Corp.*, No. 17-cv-00062-CAB (RBB), 2018 WL 280023, at *3
26 (S.D. Cal. Jan. 3, 2018) (quoting *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991)).

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1 **III. DISCUSSION**

2 **A. Deposition of Plaintiff**

3 1. Background

4 On May 17, 2023, Defendant noticed Plaintiff’s deposition by oral examination for
5 June 1, 2023, at 9:00 a.m. at the U.S. Attorney’s Office in downtown San Diego. (ECF
6 No. 51 at 4; Declaration of Mary Cile Glover-Rogers (“Glover-Rogers Decl.”), ¶ 2, Ex. 1.)
7 After sending the notice of deposition, defense counsel had several communications with
8 Plaintiff regarding his deposition. (ECF No. 51 at 4; Glover-Rogers Decl. ¶¶ 4–8.) On the
9 morning of the scheduled deposition day, Plaintiff requested to reschedule the deposition,
10 but ultimately agreed to appear “solely for purposes of stating his objections on the record.”
11 (ECF No. 51 at 5; Glover-Rogers Decl. ¶¶ 9–11.)

12 On June 1, 2023, Plaintiff appeared for his deposition over two hours late, but
13 “objected to participating in the deposition on the grounds that he was not prepared and did
14 not have counsel.”³ (ECF No. 51 at 5; Glover-Rogers Decl. ¶¶ 12–13.) He stated, “I have
15 nothing to say until I have an attorney here.” (Glover-Rogers Decl. ¶ 12, Ex. 3 at 3.)
16 Plaintiff also expressed that he was awaiting surgery and was in pain. (*Id.* at 3–4.) He
17 also stated: “I don’t want to hear what you have to say. I just want it said on record that
18 I’m not prepared, and that’s it. And then I would like to exit.” (*Id.* at 3.)

19 Plaintiff informed defense counsel that he would later call to confirm a new
20 deposition date after checking his calendar. (ECF No. 51 at 5.) Defense counsel followed
21 up with Plaintiff by telephone, mail, and email to reschedule the deposition. (ECF No. 51
22 at 5–6; Glover-Rogers Decl. ¶¶ 13–14.) On June 2, 2023, defense counsel called the Court
23 regarding a discovery dispute over Plaintiff’s deposition. (ECF No. 51 at 6; Glover-Rogers
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27 ³ Plaintiff was previously represented by counsel in this case. However, his counsel
28 moved to withdraw, and that request was granted on January 9, 2023. (ECF No. 45.) Since
that time, Plaintiff has been proceeding *pro se*.

1 Decl. ¶ 15; *see also* ECF No. 48.)⁴ Since June 1, 2023, Plaintiff has not responded to
2 communications from defense counsel regarding rescheduling Plaintiff’s deposition. (ECF
3 No. 51 at 6; Glover-Rogers Decl. ¶ 16; *see also* ECF No. 57.)

4 2. Legal Standard

5 Federal Rule of Civil Procedure 30 authorizes a party to depose “any person,
6 including a party, without leave of court” by oral questions by giving “reasonable written
7 notice to every other party.” Fed. R. Civ. P. 30(a)(1), (b)(1). There is no fixed rule as to
8 what constitutes reasonable written notice because “the analysis is necessarily case-specific
9 and fact intensive.” *Lucas v. Breg, Inc.*, No. 3:15-cv-00258-BAS-NLS, 2015 WL 8328696,
10 at *2 (S.D. Cal. Dec. 8, 2015) (quoting *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 320,
11 327 (N.D. Ill. 2005)). “Courts have found approximately ten days’ notice generally is
12 considered reasonable notice, although the particular circumstances of a case may shorten
13 or lengthen the amount of notice that is considered reasonable.” *Id.*; *see also Thompson v.*
14 *CoreLogic Rental Prop. Sols., LLC*, No. 21-cv-1716-GPC(WVG), 2022 WL 16753141, at
15 *3 (S.D. Cal. Oct. 13, 2022) (“Courts construe ‘reasonable notice’ to be five days, if the
16 deposition notice does not require production of documents at the deposition.”); *Marchiona*
17 *v. United States*, No. 8:21-cv-01476-JLS (JDEx), 2022 WL 19076661, at *3 (C.D. Cal.
18 Dec. 9, 2022) (noting that when no documents are demanded, for individual deponents,
19 periods of fourteen days, ten days and eight days have been found to be reasonable).

20 If a party objects to any aspect of the deposition, the objection must be noted on the
21 record, but the examination still proceeds. Fed. R. Civ. P. 30(c)(2). “[T]he testimony is
22 taken subject to any objection.” *Id.* “At any time during a deposition, the deponent or a
23 party may move to terminate or limit it on the ground that it is being conducted in bad faith

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26 ⁴ The Court set a telephonic Discovery Conference for June 12, 2023, at 11:00 a.m. to
27 discuss the dispute regarding Plaintiff’s deposition. (ECF No. 48.) However, Plaintiff
28 appeared late to the Discovery Conference and then disconnected before Judge Burkhardt
could join. (ECF No. 49.) The Court issued an Order to Show Cause regarding Plaintiff’s
non-appearance at the Discovery Conference. (ECF No. 50.)

1 or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.”
2 Fed. R. Civ. P. 30(d)(3)(A). “If the objecting deponent or party so demands, the deposition
3 must be suspended for the time necessary to obtain an order.” *Id.*

4 Unless the objecting party has filed a motion for protective order under Federal Rule
5 of Civil Procedure 26(c), any failure to appear is “not excused on the ground that the
6 discovery sought was objectionable.” Fed. R. Civ. P. 37(d)(2); *see also Elizondo v.*
7 *SeaWorld Parks & Ent., Inc.*, No. 20-cv-00829-GPC-BGS, 2021 WL 1923287, at *7 (S.D.
8 Cal. May 13, 2021) (“In order to cancel or stay a properly-noticed deposition, the opposing
9 party must obtain a protective order before the deposition date in order to relieve the
10 deponent or her counsel of the duty to appear [at] the properly noticed deposition.”).

11 Federal Rule of Civil Procedure 37 provides that “[o]n notice to other parties and all
12 affected persons, a party may move for an order compelling disclosure or discovery.” Fed.
13 R. Civ. P. 37(a)(1). A party seeking discovery may move for an order compelling an
14 answer if “a deponent fails to answer a question asked under Rule 30.” Fed. R. Civ. P.
15 37(a)(3)(B)(i). For purposes of a motion to compel, “an evasive or incomplete disclosure,
16 answer, or response must be treated as a failure to disclose, answer, or respond.” Fed. R.
17 Civ. P. 37(a)(4).

18 A court may, on motion, order sanctions if a party fails, after being served with
19 proper notice, to appear for that person’s deposition. Fed. R. Civ. P. 37(d)(1)(A)(i).
20 Sanctions may also be awarded if a party “impedes, delays, or frustrates the fair
21 examination of the deponent.” Fed. R. Civ. P. 30(d)(2).

22 3. Analysis

23 Here, Defendant gave Plaintiff reasonable written notice of his deposition by oral
24 examination. On May 17, 2023, Defendant mailed Plaintiff written notice of his
25 deposition. (Glover Rogers Decl. ¶ 3.) Although Plaintiff did not receive a copy of the
26 notice by mail until May 27, 2023 (*id.* ¶ 6, Ex. 2), Defendant emailed Plaintiff a copy of
27 the mailed notice on May 25, 2023, and also had a conversation with Plaintiff about the
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1 scheduling of the deposition (*id.* ¶¶ 4–8). Therefore, Plaintiff had actual notice of the
2 deposition at least seven days before the deposition date.

3 Despite expressing some reservations about his availability, Plaintiff did not cancel
4 or reschedule his deposition before the noticed date of June 1, 2023. Defendant gave
5 Plaintiff multiple opportunities to reschedule the deposition, but Plaintiff chose to show up
6 and refuse to answer questions on the grounds that he was not ready and did not have an
7 attorney. “[A] party who merely appears for a deposition that does not take place has not
8 ‘been deposed’ since he has not been examined by oral questions.” *Paige v. Consumer*
9 *Programs, Inc.*, 248 F.R.D. 272, 275 (C.D. Cal. 2008); *see also* Fed. R. Civ. P.
10 30(a)(2)(A)(ii). Therefore, the Court finds that Plaintiff has not been deposed in this
11 matter.⁵

12 Plaintiff’s failure to appear and answer questions at his deposition was not excused
13 on the ground that the discovery sought was objectionable, because he did not have a
14 pending motion for protective order under Rule 26(c)⁶ at the time of the scheduled
15 deposition. *See* Fed. R. Civ. P. 37(d)(2); *Paige*, 248 F.R.D. at 275. Moreover, to the extent
16 Plaintiff believed he suspended the deposition “on the ground that it [was] being conducted
17 in bad faith or in a manner that unreasonably annoy[ed], embarrass[ed], or oppresses[d]”
18 him, he has since failed to seek a protective order under Rule 26(c) forbidding or limiting
19 his deposition. *See* Fed. R. Civ. P. 30(d)(3)(A).

21 ⁵ Even if the Court were to find that Plaintiff has already been deposed in this case,
22 such a finding would not preclude the Court from granting Defendant additional time
23 consistent with Rule 26(b)(2) “to fairly examine” Plaintiff. *See* Fed. R. Civ. P. 30(d)(1).

24 ⁶ Under Rule 26(c), a party may move for a protective order forbidding or limiting the
25 scope of discovery, on a showing of good cause, to protect that party “from annoyance,
26 embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c)(1).
27 However, “courts rarely disallow the taking of a deposition absent extraordinary
28 circumstances.” *Ashley v. Moore*, No. CV 22-4909-DMG (KSX), 2023 WL 4205807, at
*5 (C.D. Cal. May 10, 2023) (citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th
Cir. 1975) (“a strong showing is required before a party will be denied entirely the right to
take a deposition”)).

1 Defendant is entitled to depose Plaintiff absent a protective order stating otherwise
2 and such deposition has not taken place. The fact that Plaintiff is proceeding in this matter
3 without counsel is not a factor. All *pro se* parties in this District “must proceed with
4 diligence to take all steps necessary to bring an action to readiness for trial.” CivLR
5 16.1(b); *see also Carter*, 784 F.2d at 1008. As the Honorable Todd W. Robinson warned
6 Plaintiff when he granted the motion to withdraw filed by Plaintiff’s former counsel,

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8 Plaintiff must comply with the dates set forth in the Court’s December 2, 2022
9 Scheduling Order, (*see* ECF No. 36), as well as the Federal Rules of Civil
10 Procedure and this District’s Civil Local Rules. *See* S.D. Cal. CivLR 83.11(a).
11 Plaintiff is cautioned that “[f]ailure . . . of any party[] to comply with th[is
12 District’s Civil Local R]ules, with the Federal Rules of Civil or Criminal
13 Procedure, or with any order of the Court may be grounds for imposition by
14 the Court of any and all sanctions authorized by statute or rule or within the
inherent power of the Court, including, without limitation, dismissal of any
actions, entry of default, finding of contempt, imposition of monetary
sanctions or attorneys’ fees and costs, and other lesser sanctions.

15 (ECF No. 45 at 3.)

16 Courts in this District routinely grant motions to compel the deposition of a *pro se*
17 Plaintiff. *See, e.g., Bailey v. Hollister*, No. 07-cv-01143 JM (NLS), 2008 WL 3851959, at
18 *2 (S.D. Cal. Aug. 15, 2008) (granting motion to compel the deposition of a *pro se* plaintiff
19 where his refusal to answer questions at his deposition was not justified); *Dewidar*, 2018
20 WL 280023, at *4 (granting motion to compel the deposition of a *pro se* plaintiff where
21 the party had not been deposed, she had no basis for refusing to be deposed, and she had
22 not obtained a protective order).

23 Accordingly, the Court **GRANTS** Defendant’s motion to compel Plaintiff’s
24 deposition.

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1 **B. Release of Records**

2 Defendant seeks an order compelling Plaintiff to execute a release of records relating
3 to his applications for Social Security disability benefits and SSI. (ECF No. 51 at 2.)
4 Defendant has learned that Plaintiff is receiving Social Security disability benefits, but the
5 nature of his disability is unknown. (ECF No. 51 at 6; Glover-Rogers Decl. ¶ 17.)
6 Defendant argues it is “presently unclear whether such disability impacts Plaintiff’s ability
7 to work, which may impact his claim for lost wages.” (ECF No. 51 at 6; Glover-Rogers
8 Decl. ¶ 17.) In his Second Amended Complaint, Plaintiff alleges that as a direct and
9 proximate result of Defendant’s discrimination and retaliation, he “has suffered and will
10 continue to suffer pain, humiliation, and emotional distress,” and “has suffered and will
11 continue to suffer a loss of earnings and other employment benefits and job opportunities.”
12 (ECF No. 26 ¶ 38.) In his Prayer for Relief, he seeks general damages, compensatory
13 damages, and special damages, “including but not limited to back pay, front pay, moving
14 expenses, and other related costs.” (*Id.* ¶¶ 40, 43.)

15 On June 5, 2023, Defendant asked Plaintiff to sign a release for records relating to
16 his applications for Social Security disability benefits and SSI. (ECF No. 51 at 6; Glover-
17 Rogers Decl. ¶ 17.)⁷ The release authorizes the Social Security Administration to provide
18 the following information to Defendant: (1) current monthly Social Security benefit
19 amount; (2) current monthly SSI payment amount; (3) Social Security benefit amounts
20 from January 1, 2020 to the present;⁸ (4) SSI payment amounts from January 1, 2020 to
21 the present; (5) Medicare entitlement from January 1, 2020 to the present; (6) complete
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24 ⁷ During the hearing on the Motion to Compel, Defendant represented that he would
25 be serving a subpoena along with the release for records on the Social Security
26 Administration. Defendant also provided the Court with a copy of the release at issue,
27 which was docketed at ECF No. 59.

28 ⁸ During the hearing on the Motion to Compel, Defendant represented that he
understands Plaintiff has been receiving disability benefits from the Social Security
Administration from approximately January 2020 to the present.

1 medical records; and (7) any and all award/denial notices, benefit applications, and appeals
2 for Retirement, Survivors, and Disability Insurance and SSI from November 2017⁹ to the
3 present. (ECF No. 59.) Defendant followed up with Plaintiff on June 9, 2023. (ECF No.
4 51 at 6; Glover-Rogers Decl. ¶ 18.) To date, Defendant has received no response. (ECF
5 No. 51 at 6; Glover-Rogers Decl. ¶ 18.) Defendant argues that the requested information
6 is “highly relevant and would lead to the discovery of admissible evidence.” (ECF No. 51
7 at 10.) Defendant further argues that Plaintiff has an obligation to respond to a reasonable
8 request for information and should be compelled to release such information. (*Id.*)

9 District courts in the Ninth Circuit routinely order a party to execute a release for
10 Social Security records on a showing of relevance. *See, e.g., Evans v. Affiliated Computer*
11 *Servs., Inc.*, No. CV 13-7407-JFW (AGRx), 2014 WL 12600831, at *4 (C.D. Cal. May 9,
12 2014) (granting the defendants’ motion to compel applications for social security benefits
13 as they are “entitled to discover whether any application for disability benefits, medical
14 records or decision is inconsistent with [the plaintiff’s] claims in th[e] case” and ordering
15 the defendants to prepare authorization forms); *Barsamian v. City of Kingsburg*, No. 1:07-
16 cv-00316 OWW GSA, 2008 WL 2168996, at *4 (E.D. Cal. May 22, 2008) (granting the
17 defendants’ motion for discovery of the plaintiff’s social security records as they are
18 “relevant to her physical and/or mental conditions” and ordering the plaintiff to sign a
19 written consent form for release of the records); *Putterman v. Supreme Chain Logistics,*
20 *Ltd.*, No. C18-376RSM, 2018 WL 6179325, at *3 (W.D. Wash. Nov. 27, 2018) (ordering
21 the plaintiff to produce all social security records or provide an executed release where the
22 plaintiff put the records at issue by claiming extensive physical and mental injuries from a
23 vehicular accident and making a social security disability claim close to the date of the
24 accident).

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27 ⁹ Although Plaintiff alleges in his Second Amended Complaint that he was terminated
28 from employment by Defendant on August 20, 2017 (ECF No. 26 ¶ 25), Defendant claims
that Plaintiff was terminated in November 2017 (ECF No. 51 at 3).

1 The Court finds that Defendant has established that Plaintiff's Social Security
2 records are relevant to Plaintiff's claim for damages as they have bearing on his physical
3 or mental condition and any financial harm resulting from his claims. Plaintiff has not
4 opposed the motion. Accordingly, the Court **GRANTS** Defendant's motion for release of
5 records.

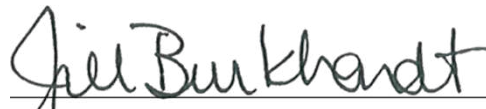
6 **IV. CONCLUSION**

7 For the foregoing reasons, Defendant's Motion to Compel Plaintiff's Deposition and
8 Release of Records is **GRANTED**. Accordingly, the Court **ORDERS** as follows:

- 9 1. Within seven (7) days of the date of this Order, Plaintiff shall provide
10 Defendant with at least five available business days before August 25, 2023,¹⁰
11 when Plaintiff's deposition may be scheduled to convene from 9:00 AM to
12 5:00 PM;
- 13 2. Plaintiff shall appear for a deposition at the date and time noticed by
14 Defendant in writing on one of Plaintiff's available days;
- 15 3. Within seven (7) days of the date of this Order, Plaintiff shall execute the
16 Social Security release for records provided by Defendant and return it to
17 Defendant; and
- 18 4. All documents received from the Social Security Administration by
19 Defendant shall be treated as "CONFIDENTIAL" and subject to the
20 Protective Order (ECF No. 40) in this case.

21 **IT IS SO ORDERED.**

22 Dated: July 18, 2023

23 
24 Hon. Jill L. Burkhardt
25 United States Magistrate Judge

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27 ¹⁰ The deposition shall be completed before the current fact discovery deadline of
28 August 25, 2023, absent good cause shown in a motion filed before the Court. (*See* ECF
No. 55 ¶ 1.)