

1 introducing designated matters in evidence.” “Rule 37 sanctions must be applied diligently both
2 ‘to penalize those whose conduct may be deemed to warrant such a sanction, [and] to deter those
3 who might be tempted to such conduct in the absence of such a deterrent.’” Roadway Express,
4 Inc. v. Piper, 447 U.S. 752, 763-64 (1980) (quoting National Hockey League v. Metropolitan
5 Hockey Club, 427 U.S. 639, 643 (1976)). Mr. Schmidt has not substantively responded to
6 plaintiff’s motion, nor has he offered any explanation for his failure to comply with the Court’s
7 discovery order. His initial failure to engage in discovery necessitated an extension of the
8 discovery deadlines, and his continued failure has effectively precluded plaintiff from
9 investigating and analyzing his defenses. Discovery in this matter is now closed and dispositive
10 motions are pending.

11 In order to ensure the timely resolution of the remainder of this case, in order to deter
12 other litigants from engaging in dilatory tactics, in recognition of the lack of any other viable and
13 effective alternative, and as punishment for his failure to satisfy his discovery obligations, the
14 Court finds that an evidentiary bar is warranted in this matter. In addition, the Court finds that
15 the failure to comply with the Court’s order was not substantially justified and that an award of
16 fees under Fed. R. Civ. P. 37(b)(2)(C) is not unjust.

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18 The United States’ motion for sanctions is GRANTED. Mr. Schmidt is hereby barred
19 from introducing any evidence or presenting testimony from any witnesses that should have been
20 disclosed in his initial disclosures and/or in response to the United States’ discovery requests,
21 with the exception of the documents produced at deposition and/or filed with the Court at Dkt.
22 # 46 and # 47. Mr. Schmidt shall also be required to reimburse the United States for the
23 reasonable expenses incurred in bringing its motion to compel and this motion for sanctions.
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