

1 CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
2 S. SCOTT GREENBERG, ESQ.
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Attorney for Defendant,
5 CLARK COUNTY SCHOOL DISTRICT

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 BRAMBY TOLLEN,
9 Plaintiff,
10 v.
11 CLARK COUNTY SCHOOL DISTRICT,
12 Defendants.

CASE NO. 2:15-cv-02035-APG-VCF
EMERGENCY MOTION TO COMPEL

13
14 COMES NOW, Defendant Clark County School District, by and
15 through its counsel of record, S. Scott Greenberg, Senior Assistant
16 General Counsel, Clark County School District, and files this
17 emergency motion to compel concerning Plaintiff's failure to serve
18 Rule 26 disclosures and failure to respond to interrogatories and
19 requests for documents. This Motion is made pursuant to
20 Fed.R.Civ.P. 37 and 41 and based upon the following Points and
21 Authorities, attached exhibits and upon such oral argument as the
22 Court may allow.

23 DATED this 4th day of August, 2016.

24 CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

25
26 By: /s/ S. Scott Greenberg
S. SCOTT GREENBERG
27 Nevada Bar No. 4622
5100 West Sahara Avenue
28 Las Vegas, NV 89146
Attorneys for Defendant

1 **MEMORANDUM OR POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a *pro se* lawsuit filed by a former District employee.
4 The District responded to the matter with a motion to dismiss.
5 Docket No. 9. The sole claim for relief is a state law public
6 policy tort claim. Plaintiff has never served disclosures required
7 by Fed.R.Civ.P 26 and has failed to respond to written discovery
8 served June 10, 2016. Moreover, Plaintiff stated to the undersigned
9 that she has decided not to proceed with this case. Therefore this
10 motion is being brought requesting dismissal of the action, or in
11 the alternative, appropriate sanctions for Plaintiff's willful
12 discovery failures.

13 **II. LEGAL ARGUMENT**

14 **A. Plaintiff's Failure to Serve Rule 26 Disclosures and**
15 **Failure to Respond to Written Discovery**

16 Following filing the motion to dismiss, the undersigned wrote
17 Plaintiff explaining the duties to meet under Rule 26, prepare a
18 discovery plan and serve initial disclosures. Exhibit 2. Plaintiff
19 signed the discovery plan the undersigned sent her and it was
20 entered by the Court. Docket No. 18. The discovery plan clearly
21 set out the parties' initial disclosures where due June 2nd. Id.
22 District counsel has never received Rule 26 disclosures from
23 Plaintiff. Exhibit 1 at paragraph 2. District counsel wrote
24 Plaintiff about her failure to serve disclosures. Exhibits 3-4.
25 Plaintiff never responded nor served the required disclosures.

26 The District served interrogatories and requests for documents
27 on June 10, 2016. Exhibit 9-10. Responses from Plaintiff were due
28 July 13, 2016. No responses have been received. Exhibit 1 at

1 paragraph 3.

2 **B. District Counsel's Meet and Confer Actions**

3 Several days before July 19th, the undersigned had his
4 assistant call Plaintiff about the discovery responses but Plaintiff
5 did not answer so a message was left but not returned by Plaintiff.
6 Exhibit 1 at paragraph 4. The undersigned called Plaintiff on July
7 19th about these issue and left her a message as she did not answer.
8 An email was also sent to her. Exhibit 5. The undersigned finally
9 spoke to Plaintiff on July 21st, and after asking Plaintiff when she
10 would be responding to the discovery that was over due, Plaintiff
11 stated she would not be answering the discovery. Exhibit 1 at
12 paragraph 5. Rather shocked by that response, counsel inquired
13 "why" to which Plaintiff responded that she had some unspecified
14 event happen with her family (or life) and she had decided not to
15 proceed with the lawsuit. Id. The undersigned explained a document
16 would need to be filed and stated he would forward a stipulation to
17 dismiss the case for her to sign and return. Plaintiff responded
18 affirmatively that she understood and would do so. Id. The
19 undersigned immediately emailed Plaintiff to confirm this and had
20 the stipulation mailed to her. Exhibits 6-7.¹

21 The undersigned received a letter from Plaintiff on August 2nd
22 claiming there was "a misunderstanding" and that she believed the
23 District was offering her a "resolution in exchange" for dismissing
24 the case. Exhibit 1 at paragraph 6; Exhibit 8. At no time did the
25 undersigned and Plaintiff discuss any type of resolution nor did

26
27 ¹ Plaintiff indicated she had issues with her email sometimes so the undersigned stated he
28 would email her the stipulation and mail it to her. Plaintiff did not claim her email did not work.
The undersigned used the email address Plaintiff earlier provided him to communicate with her.

1 Plaintiff ever request anything in exchange for the dismissal.
2 Plaintiff unambiguously stated she had decided not to proceed with
3 the case for personal reasons which is why the undersigned prepared
4 and forwarded the stipulation. Exhibit 1 at paragraph 7. Plaintiff
5 still has not served any disclosures or discovery responses. Id.
6 Counsel immediately called Plaintiff after receiving her letter but
7 she did not answer so a message was left and asked Plaintiff to
8 return the call. An email was also sent Plaintiff. Exhibit 1 at
9 paragraph 8; Exhibit 11. Plaintiff has not responded to either.

10 **C. The Written Discovery Plaintiff has Refused to Answer**

11 The interrogatories propounded, none of which have been
12 answered, are:

13 **INTERROGATORY NO. 1:** Itemize and fully describe each
14 and every element of damage which you seek to recover in
15 this matter, and for each element of damage specified,
16 explain how you calculated such.

17 **INTERROGATORY NO. 2:** Identify all persons you believe
18 have knowledge concerning the facts and circumstances of
19 the allegations in the complaint, including your requests
20 for damages, and for each person identified, state a
21 general description of the knowledge you believe the person
22 has regarding this matter.

23 **INTERROGATORY NO. 3:** If you contend that your damages
24 include any physical injuries or mental/emotional distress,
25 specifically describe the physical injuries or
26 mental/emotional distress you claim to have suffered and
27 identify any hospital, doctor or other health care provider
28 from whom you have sought treatment or received
treatment/diagnosis/examination for such complaints,
sufficiently for a subpoena to be served upon the said
provider or entity, and execute the enclosed medical
records release for each such provider or entity.

INTERROGATORY NO. 4: If you are seeking damages for
emotional distress, identify any health care provider,
counselor, therapist or other such professional, including
address sufficiently so that a subpoena can be served on
the person/entity, from whom you have sought treatment or
assistance for any type of emotional distress or
psychological issue from January 1, 2008, to the present,
and execute the enclosed medical records release for each

1 such provider or entity.

2 **INTERROGATORY NO. 5:** Identify any and all
3 employment/jobs you have sought or applied for (other than
4 with the District), including as an independent contractor,
5 from August 1, 2013, to the present and for each identify:
6 (a) date applied for employment/job, (b) position and
7 general duties sought, © name/address of employer/entity
8 sufficient to serve a subpoena (d) rate of pay for position
9 and (e) if you received the job/position but no longer hold
10 said job/position why (for example quit, discharged, etc.)
11 and execute the enclosed employment records release for any
12 employer identified that you worked for.

13 **INTERROGATORY NO. 6:** If you are collecting Nevada PERS
14 benefits, identify when you began collecting those benefits
15 and execute the enclosed records release so that the
16 District may obtain the records from PERS.

17 **INTERROGATORY NO. 7:** Describe the event you are
18 referring to in paragraph 11 of the amended complaint
19 (including who you claim engaged in the conduct) wherein
20 you allege your "life had been threatened on the job in a
21 reduction in force event."

22 **INTERROGATORY NO. 8:** Identify any doctor or health care
23 provider that diagnosed you as suffering from PTSD as
24 alleged in paragraph 11 of the amended complaint, along
25 with the dates you were treated for such, and the event
26 that you claim triggered your alleged PTSD. Unless
27 otherwise provided, execute an enclosed medical records
28 release for each such provider or entity identified.

INTERROGATORY NO. 9: Identify any adverse employment
actions taken against you which you claim were due to
unlawful retaliation for "disclosure of improper actions"
as alleged in paragraphs 1 (second paragraph numbered 1)
and 3 (second paragraph numbered 3) of the amended
complaint.

INTERROGATORY NO. 10: Describe what you mean by your
allegation in paragraph 3 (second paragraph numbered 3) of
the amended complaint that you were subject to "work place
hostility" including identifying any acts of such and who
you assert engaged in such acts towards you.

INTERROGATORY NO. 11: Explain what "improper actions
committed by CCSD" you assert you disclosed as alleged in
paragraph 1 (second paragraph numbered 1) of the amended
complaint and explain why you claim what you disclosed was
"improper" activity.

INTERROGATORY NO. 12: If what is described in paragraph
2 (second paragraph numbered 2) of the amended complaint
is different than the "improper actions" you are referring

1 to in paragraph 1, explain what you believe was wrong or
2 improper with the events described in that paragraph 2.

3 **INTERROGATORY NO. 13:** Identify the specific contract(s)
4 you are referring to in paragraph 2 (second paragraph
5 numbered 2) of the amended complaint wherein you allege
6 "that the contract was and had been overextended . . . for
7 several years."

8 **INTERROGATORY NO. 14:** Identify the specific time period
9 you were referring to in paragraph 2 (second paragraph
10 numbered 2) of the amended complaint wherein you allege
11 "that the contract was and had been overextended . . . for
12 several years," i.e. the specific time period you claim the
13 "contract" was "overextended."

14 The requests for documents propounded, none of which have been
15 answered, are:

16 **REQUEST NO. 1:** Please produce copies of any statements by
17 other persons that you assert support the allegations in
18 the complaint.

19 **REQUEST NO. 2:** If you maintained or recorded any notes
20 concerning your employment with the Clark County School
21 District from January 1, 2013 to the present, please
22 produce those notes.

23 **REQUEST NO. 3:** If you maintained or recorded any notes
24 concerning the allegations in the complaint, please produce
25 those notes.

26 **REQUEST NO. 4:** If you maintained or recorded any notes
27 concerning communications you had with any person, or
28 between other persons, concerning the allegations in your
complaint, please produce those notes.

REQUEST NO. 5: If you recorded any communications with or
between any persons (including yourself) concerning the
allegations in the complaint, please produce copies of
those recordings.

REQUEST NO. 6: If you recorded any communications with or
between any persons (including yourself) concerning your
employment since January 1, 2013, please produce copies of
those recordings.

REQUEST NO. 7: Please produce copies of all communications
you have had with any potential witness in this matter that
discusses or mentions any of the facts or allegations
underlying your lawsuit or your employment with the
District.

1 **REQUEST NO. 8:** Please produce copies of any documents that
2 support your claim for damages in this matter, including
any documents you used to calculate your damages.

3 **REQUEST NO. 9:** Please produce copies of any diary or
4 journals you maintained during your employment with the
Clark County School District from January 1, 2013, forward.

5 **REQUEST NO. 10:** Please produce copies of any complaints
6 you made about your District employment from January 1,
2013, forward, to any person or entity, including persons
7 or entities outside the District, and any responses
received from such.

8 **REQUEST NO. 11:** Please produce copies of any documents
9 you submitted to Nevada PERS to start collecting PERS
benefits and any documents you received in response to
such.

10 **REQUEST NO. 12:** Please produce copies of all records,
11 including medical records, for any treatment, diagnosis,
exam, testing or any other contact you have had with a
12 health care provider, counselor, therapist or similar
professional, for any physical injury or emotional distress
13 you allege was caused by the allegations in the complaint
or for which you are seeking damages in this matter.

14 **REQUEST NO. 13:** Please produce copies of any documents
15 that evidence your "life had been threatened on the job" as
alleged in paragraph 11 of the complaint.

16 **REQUEST NO. 14:** Please produce copies of any documents
17 that evidence you were diagnosed as suffering from PTSD.

18 **REQUEST NO. 15:** Please produce copies of any documents
19 you have provided to any expert witness you intend to call
at trial.

20 **REQUEST NO. 16:** Please produce copies of any documents
21 you have received from any expert witness you intend to
call at trial, including but not limited to CVs, billing
22 statements, reports or analysis and contracts or other
agreements to provide services.

23 **REQUEST NO. 17:** Please produce copies of all documents
24 you forwarded to, or provided to, the Clark County
Association of School Administrators and Professional-
25 Technical Employees (CCASAPE), including employees and
agents such as Bill Garis and Steven Augspurger, regarding
26 your District employment from January 1, 2013, forward and
any documents received in response from CCASAPE.

27 **REQUEST NO. 18:** Please produce any documents which you
28 contend evidence or support your allegation in the
complaint that what you disclosed was "improper actions

1 committed by CCSD.”

2 **REQUEST NO. 19:** Please produce any documents which you
3 reviewed to conclude that the subject of your “disclosure”
4 alleged in paragraph 1 (second paragraph numbered 1) of the
5 complaint amounted to “improper actions committed by CCSD.”

6 **REQUEST NO. 20:** Please produce any documents which you
7 received in response to your asserted disclosure of
8 “improper actions” alleged in the complaint.

9 **REQUEST NO. 21:** Please produce any documents which you
10 contend evidence or support your allegations that you were
11 retaliated against or harassed because you disclosed
12 “improper actions committed by CCSD.”

13 **REQUEST NO. 22:** Please produce the contract(s) you are
14 referring to in paragraph 2 (second paragraph numbered 2)
15 of the complaint.

16 **REQUEST NO. 23:** Please produce any documentation which
17 evidences the contract(s) you are referring to in paragraph
18 2 (second paragraph numbered 2) of the complaint was
19 “overextended.”

20 **REQUEST NO. 24:** Please produce any documentation which
21 evidences the Board of Trustees did not approve the
22 expenditures you refer to in paragraph 2 (second paragraph
23 numbered 2) of the complaint as “overextended.”

24 **REQUEST NO. 25:** Please produce all documents you used
25 in any efforts to obtain employment, or work for
26 compensation, and evidencing the work you sought, outside
27 of the District following January 1, 2014, including
28 without limitation, all correspondence, emails, job
postings, job descriptions, résumé(s) (including all
variations thereof), and job applications (whether
completed, partially completed, or blank), up to the
present time, and any responses to such efforts.

REQUEST NO. 26: Produce all documents evidencing
any wages you have received, or earnings as an independent
contractor, other than from the District since March 29,
2014.

REQUEST NO. 27: Produce all documents, including but
not limited to letters, emails, applications, contracts,
and others, between you and Snohomish County, Washington,
which you prepared and/or sent to inquire about, apply,
interview or negotiate for employment and all documents
received in response to such from Snohomish County,
Washington.

REQUEST NO. 28: For all places you have lived/resided
outside Nevada since March 2014, produce a copy of the

1 lease, rental agreement, purchase agreement or any other
2 document you entered with the owner/representative of the
3 property to live/reside at the address, rent or own the
4 property.

5 Rule 26(a)(1)© mandates the required disclosures (witness
6 identification, document identification and calculation of damages)
7 be served within 14 days of the Rule 26 meeting and in this case
8 those disclosures were due June 2nd. Docket No. 18. Rules 33 and
9 34 require interrogatories and requests for documents to be
10 responded to 30 days after service. Clearly, Plaintiff has failed
11 to timely serve required Rule 26 disclosures and failed to timely
12 respond to the above written discovery requests. When the
13 undersigned finally managed to contact Plaintiff to discuss her
14 discovery violations, Plaintiff clearly stated she was not preparing
15 the required disclosures/responses and had decided not to proceed
16 with her case. Exhibit 1 at paragraph 5. Plaintiff's claim now
17 that she believed some "resolution" was involved (Exhibit 8) is not
18 based upon any reasonable interpretation of the facts and appears
19 to be just playing games to not fulfill her responsibilities as a
20 litigant. "Pro se litigants must follow the same rules of procedure
21 that govern other litigants." King v. Atiyeh, 814 F.2d 565, 567
22 (9th Cir. 1987), *overruled on other grounds* 693 F.3d 896 (9th Cir.
23 2012).

24 The District requests the Court dismiss this action under
25 Fed.R.Civ.P 41(b)² as clearly Plaintiff has decided not to prosecute
26 the matter - indeed she has stated such. Exhibit 1 at paragraph 5.

27 ² The provision provides for dismissal: "If the plaintiff fails to prosecute or to comply with
28 these rules or a court order, a defendant may move to dismiss the action or any claim against it."

1 Alternatively, Plaintiff has willfully refused to not comply with
2 Rule 26's mandatory disclosures and refused to respond to discovery.
3 Plaintiff stated to District counsel that she has chosen not to
4 provide the required disclosures or answer the written discovery.
5 Should the Court decide to order non-terminating sanctions allowing
6 the case to proceed, the District requests the Court order Plaintiff
7 to immediately (within 10 days) serve the required Rule 26
8 disclosures and fully respond, without objections, to the written
9 interrogatories and requests for documents and impose a monetary
10 sanction of \$750 for District counsel's time involved in attempting
11 to handle this discovery dispute and preparing this motion. The
12 Court should also clearly warn Plaintiff that failure to abide by
13 the Court's discovery order will result in further sanctions
14 including case dismissal.

15 The current discovery cutoff is October 11, 2016. While this
16 is not imminent, given Plaintiff is proceeding *pro se* and the
17 difficulties counsel has had contacting Plaintiff, and her failure
18 to respond to written communications, the District requests this
19 matter be set on an emergency basis.³

20 **III. CONCLUSION**

21 Plaintiff has willfully refused to serve the required Rule 26
22 disclosures and to respond to written discovery. When the
23 undersigned spoke to Plaintiff to "meet and confer" over these
24 discovery issues, Plaintiff stated she was not going to do either
25 and that she had decided not to proceed with this lawsuit.

26

27 ³ Plaintiff resides in Washington. Besides deposing Plaintiff, the District believes it will be
28 taking at least 2 other depositions if this matter proceeds.

1 Therefore, the District requests the matter be dismissed under Rule
2 41(b), or in the alternative, appropriate sanctions imposed for
3 Plaintiff's willful discovery failures.

4 Respectfully submitted,

5 CLARK COUNTY SCHOOL DISTRICT
6 OFFICE OF THE GENERAL COUNSEL

7 By: /s/ S. Scott Greenberg
8 S. SCOTT GREENBERG
9 Nevada Bar No. 4622
10 5100 West Sahara Avenue
11 Las Vegas, NV 89146
12 Attorneys for Defendant
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CERTIFICATE OF MAILING

I hereby certify that on the 4th day of August, 2016, I served a copy of the foregoing **EMERGENCY MOTION TO COMPEL** by enclosing a true and correct copy of the same in an envelope, postage prepaid thereon, and addressed as follows:

Bramby Tollen
2818 107th Place SE
Everett, WA 98208
Plaintiff

/s/ J. Mortimer
AN EMPLOYEE OF THE CLARK COUNTY
SCHOOL DISTRICT