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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

PHILLIP JON ROSENBLUM,

1:05-cv-01473-LJO-GSA (PC)

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION
TO COMPEL FURTHER RESPONSES TO
INTERROGATORIES

vs.

ORDER DENYING PLAINTIFF’S MOTION
TO EXTEND DISCOVERY

C/O ELLIS, et al.,

ORDER CLOSING DISCOVERY

Defendants.

ORDER REINSTATING DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT ON
COURT’S CALENDAR
(Doc. 104.)

ORDER GRANTING PLAINTIFF’S MOTION
TO EXTEND TIME TO RESPOND TO
MOTION FOR SUMMARY JUDGMENT
(Doc. 109.)

THIRTY DAY DEADLINE FOR PLAINTIFF
TO FILE A RESPONSE TO DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT

_____ /

Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on November 21, 2005. (Doc. 1.) This case now proceeds on the First Amended Complaint filed

1 by Plaintiff on July 20, 2010, against defendant Correctional Officer Ellis (“Defendant”) for failure
2 to protect Plaintiff in violation of the Eighth Amendment.¹ (Doc. 62.)

3 On February 29, 2011, Plaintiff filed a motion to extend the discovery deadline in this
4 action, to compel Defendant to respond to Plaintiff’s interrogatories, and to extend time for
5 Plaintiff to file an opposition to Defendant’s motion for summary judgment. (Doc. 109.) On
6 March 5, 2012, Defendant filed an opposition. (Doc. 110.) Plaintiff did not file a reply to the
7 opposition. Plaintiff’s motion is now before the Court.

8 **II. MOTION TO COMPEL**

9 Pursuant to Rule 37(a), a party propounding discovery may seek an order compelling
10 disclosure when an opposing party has failed to respond or has provided evasive or incomplete
11 responses. Fed. R. Civ. P. 37(a)(2)(3). An evasive or incomplete disclosure, answer, or response
12 is to be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(3). The moving
13 party bears the burden of demonstrating “actual and substantial prejudice” from the denial of
14 discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations omitted.).

15 **A. Plaintiff’s Motion**

16 Plaintiff seeks an order compelling Defendant to answer his interrogatories. Plaintiff
17 declares under penalty of perjury that Defendant “declined to answer Plaintiff’s discovery requests,
18 absent a court order.” (Motion, Doc. 109 at 2 ¶3.)

19 **B. Defendant’s Opposition**

20 In opposition, Defendant argues that he fully responded to each of Plaintiff’s discovery
21 requests. Defendant submits as evidence copies of Plaintiff’s seven interrogatories and
22 Defendant’s responses dated February 27, 2012. (Opp’n, Doc. 110, Exh. A, C.)

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26 ¹On October 28, 2010, the Court dismissed all other claims and defendants from this action, based on
27 Plaintiff’s failure to state a claim. (Doc. 66.)

1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's motion to compel is DENIED;
- 4 2. Plaintiff's motion for extension of the discovery deadline in this action is DENIED;
- 5 3. Discovery in this action is CLOSED;
- 6 4. Defendant's motion for summary judgment, filed on December 22, 2011, is
- 7 REINSTATED on the Court's calendar;
- 8 5. Plaintiff's motion for extension of time to file a response to Defendant's motion for
- 9 summary judgment is GRANTED;
- 10 6. Within thirty days from the date of service of this order, Plaintiff shall file a
- 11 response to Defendant's motion for summary judgment; and
- 12 7. Plaintiff's failure to comply with this order shall result in a recommendation that
- 13 this action be dismissed, with prejudice, for Plaintiff's failure to prosecute this
- 14 action.

15

16 IT IS SO ORDERED.

17 **Dated: April 9, 2012**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE