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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JAMES M. LANIER,

Plaintiff,

vs.

FRESNO UNIFIED SCHOOL DISTRICT,

Defendant.

Case No. 1: 09-cv-01779-AWI-BAM

**ORDER GRANTING DEFENDANT'S
MOTION TO COMPEL**

INTRODUCTION

This civil rights action arises out of pro se plaintiff James Lanier's ("Plaintiff") unsuccessful attempt to secure a sports officiating contract from Fresno Unified School District ("Defendant"). Plaintiff alleges Defendant's refusal to grant Plaintiff the sports officiating contract was racially motivated.

Currently before the Court is Defendant's Motion to Compel Further Responses to Set Two of Defendant's Special Interrogatories. (Doc. 101.) Plaintiff filed his opposition on July 15, 2013, and the parties filed a joint statement on July 19, 2013. (Doc. 107, 109.) The Court deemed the matter suitable for decision without oral argument pursuant to Local Rule 230(g), and vacated the hearing scheduled for July 26, 2013. (Doc. 111.) Having carefully considered the parties' submissions and the entire record in this case, the Court GRANTS Defendant's Motion to Compel.

1 **DISCUSSION**

2 **A. Legal Standard**

3 Rule 26(b) states that “[p]arties may obtain discovery regarding any nonprivileged matter
4 that is relevant to any party's claim or defense.” Fed. R. Civ. P. 26(b). “Relevant information need
5 not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery
6 of admissible evidence.” *Id.* Relevance requires only that the evidence have “any” tendency to
7 prove or disprove “any” consequential fact. *See, Guthrey v. California Dept. of Corrections and*
8 *Rehabilitation*, 2012 WL 2499938 (E.D. Cal. 2012), citing, Jones & Rosen, *Federal Civil Trials and*
9 *Evidence* (2011) Evidence, para. 8:111, p. 8B-2. “Generally, the purpose of discovery is to remove
10 surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve
11 their dispute.” *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D.Cal.2005) (quoting *Oakes v.*
12 *Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D.Cal.1998)).

13 Under the Federal Rules of Civil Procedure, interrogatories must be “answered separately
14 and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). A party is obligated to respond to the
15 fullest extent possible and state any objections with specificity. Fed. R. Civ. P. 33(b)(3), (b)(4).
16 While extensive research is not required, a reasonable effort to respond must be made. *L.H. v.*
17 *Schwarzenegger*, No. S-06-2042 LKK GGH, 2007 WL 2781132, *2 (E.D.Cal. Sep.21, 2007).

18 A responding party that objects to interrogatories is required to state objections with
19 specificity. Fed. R. Civ. P. 33(b)(4). If the party requesting discovery is dissatisfied with any of the
20 responses, the party may move to compel further responses by informing the court “which discovery
21 requests are the subject of [the] motion to compel, and, for each disputed response, inform the
22 [c]ourt why the information sought is relevant and why [the opposing party's] objections are not
23 justified.” *Ellis v. Cambra*, No. 02-cv-5646 AWI (SMS), 2008 WL 860523, at *4 (E.D. Cal. Mar.
24 27, 2008); *Brooks v. Alameida*, No. 03-cv-2343 JAM (EFB), 2009 WL 331358 (E.D. Cal. Feb. 10,
25 2009). “In each instance [of discovery], the determination whether ... information is discoverable
26 because it is relevant to the claims or defenses depends on the circumstances of the pending action.”
27 Fed. R. Civ. P. 26 Advisory Committee's note (2000 Amendment) (Gap Report) (Subdivision
28 (b)(1)).

1 **B. Plaintiff's Motion to Compel**

2 Defendant's Motion to Compel concerns two categories of information: (1) information
3 relating to Plaintiff's injuries and damages ("Defendant's Damage Interrogatories"); and (2)
4 contention interrogatories concerning the basis of and evidence supporting Plaintiff's claims
5 ("Defendant's Contention Interrogatories"). The Court addresses each in turn.

6 **1. Defendant's Damage Interrogatories**

7 Set Two of Defendant's Special Interrogatories poses twelve questions concerning Plaintiff's
8 injuries and damages. Those interrogatories are as follows:

9
10 **SPECIAL INTERROGATORY NO. 10**

11 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means to identify each
12 injury, illness, or condition and the area(s) of the body affected) each physical,
13 mental, and emotional injury, illness, or condition you attribute to the INCIDENT
14 ("INCIDENT" for purposes of these Special Interrogatories means all facts alleged by
15 the Plaintiff's First Amended Complaint in this litigation).

16 **Plaintiff's Response to Special Interrogatory No. 10:**

17 Plaintiff has suffered a variety of stress related, physical, mental and emotional
18 illnesses, injuries and conditions, affecting several areas of Plaintiff's body including
19 but not limited to Plaintiff's heart, head, lower abdominal and lower extremities, that
20 are directly attributed to this INCIDENT. All of Plaintiff's physician's records and
21 hospital records which give more accurate information, have been subpoenaed by
22 Defendants (see Exhibit "A").

23 **SPECIAL INTERROGATORY NO. 11**

24 For each injury, illness, and condition you still have that you attribute to the
25 INCIDENT, IDENTIFY ("IDENTIFY" for purposes of this interrogatory means to
26 identify each injury, illness, or condition; whether the complaint is subsiding,
27 remaining the same, or becoming worse; and the frequency and duration) nature of
28 each injury, illness, and condition.

Plaintiff's Response to Special Interrogatory No. 11:

Plaintiff has suffered a variety of stress related, physical, mental and emotional
illnesses, injuries and conditions, affecting several areas of Plaintiff's body including
but not limited to Plaintiff's heart, head, lower abdominal and lower extremities, that
are directly attributed to this INCIDENT. Plaintiff's ailments conditionally remain
the same and or are becoming worse in frequency and duration. All of Plaintiff's
physician's records and hospital records, which give more accurate information, have
been subpoenaed by Defendants (see Exhibit "A").

SPECIAL INTERROGATORY NO. 12

IDENTIFY ("IDENTIFY" for purposes of this interrogatory means name, address,
telephone number, and dates you received a consultation, examination, or treatment)

1 each medical provider you received consultation, examination, or treatment for any
2 injury, illness, or condition you attribute to the INCIDENT.

3 **Plaintiff's Response to Special Interrogatory No. 12:**

4 All of Plaintiff's physician's records and hospital records, which give more accurate
5 information, have been subpoenaed by Defendants (see Exhibit "A").

6 **SPECIAL INTERROGATORY NO. 13**

7 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the dates you
8 received a consultation, examination, or treatment; the type of consultation,
9 examination or treatment; and the charges to date) the nature of each consultation,
10 examination, or treatment for any injury, illness, or condition you attribute to the
11 INCIDENT.

12 **Plaintiff's Response to Special Interrogatory No. 13:**

13 Plaintiff, as a result of this INCIDENT, has been unable to access an affordable
14 mental health support structure for consultation, examination and or treatment due to
15 increased cost of co-pay not available with Plaintiff's insurance coverage. All of
16 Plaintiff's physician's records and hospital records, which more accurate information,
17 have been subpoenaed by Defendants (see Exhibit "A").

18 **SPECIAL INTERROGATORY NO. 14**

19 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the name of each
20 medication; the date it was prescribed or furnished; the dates you began and stopped
21 taking it; and the costs to date) each medication, prescribed or not, that you have
22 taken as a result of any injury, illness, or condition that you attribute to the
23 INCIDENT.

24 **Plaintiff's Response to Special Interrogatory No. 14:**

25 All of Plaintiff's physician's records and hospital records, which give more accurate
26 information, have been subpoenaed by Defendants (see Exhibit "A").

27 **SPECIAL INTERROGATORY NO. 15**

28 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the name of the
medical and address of each health care provider; injury, illness, or condition for
which treatment was advised; and the nature and estimated cost of treatment) the
nature of any treatment recommended by a health care provider for an injury, illness,
or condition you attribute to the INCIDENT, if any.

Plaintiff's Response to Special Interrogatory No. 15:

All of Plaintiff's physician's records and hospital records, which give more accurate
information, have been subpoenaed by Defendants (see Exhibit "A").

SPECIAL INTERROGATORY NO. 16

IDENTIFY ("IDENTIFY" for purposes of this interrogatory means to identify each
injury, illness, or condition and the area(s) of the body affected; the dates it began or
ended; and the name address, and telephone number of the health care provider whom
you received a consultation, examination, or treatment) the nature of each physical,
mental, and emotional injury you had previous to the INCIDENT that involve the
same part of your body claimed to be an injury, illness, or condition that you attribute
to the INCIDENT.

Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 16:

1 All of Plaintiff's physician's records and hospital records, which give more accurate
2 information, have been subpoenaed by Defendants (see Exhibit "A").

3 **SPECIAL INTERROGATORY NO. 17**

4 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means to identify each
5 injury, illness, or condition and the area(s) of the body affected; the dates it began or
6 ended; and the name address, and telephone number of the health care provider whom
7 you received a consultation, examination, or treatment) the nature of each physical,
8 mental, and emotional injury you received after the INCIDENT that involve the same
9 part of your body claimed to be an injury, illness, or condition that you attribute to the
10 INCIDENT.

11 **Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 17:**

12 All of Plaintiff's physician's records and hospital records, which give more accurate
13 information, have been subpoenaed by Defendants (see Exhibit "A").

14 **SPECIAL INTERROGATORY NO. 19**

15 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the type of each
16 kind of damage, the date(s) it occurred, and the amount) the nature of each kind of
17 damages you attribute to the INCIDENT.

18 **Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 19:**

19 Plaintiff's information was previously provided to Defendants

20 **SPECIAL INTERROGATORY NO. 20**

21 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the name and date
22 of each document) each document that provides evidence for each kind of damages
23 you attribute to the INCIDENT.

24 **Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 20:**

25 Plaintiff's information was previously provided to Defendants

26 **SPECIAL INTERROGATORY NO. 21**

27 IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the dates, the
28 amount of income, and how it is calculated) the nature of the total income you have
lost to date as a result of the INCIDENT.

Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 21:

Plaintiff's information was previously provided to Defendants

SPECIAL INTERROGATORY NO. 22

IDENTIFY ("IDENTIFY" for purposes of this interrogatory means the dates, the
amount of income, and how it is calculated) the nature of the total income you will
lose in the future as a result of the INCIDENT.

Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 22:

Plaintiff's information was previously provided to Defendants

(Doc. 109, 3-13.)

Defendant argues Plaintiff's responses to these interrogatories are improper because
they fail to specify specific injuries, illnesses or medical conditions related to Plaintiff's
claims. Defendant also argues that Plaintiff's reference to subpoenas Defendant served on

1 Plaintiff's medical providers -- Plaintiff's reference to "Exhibit A" -- does not constitute a
2 "separate and full response" as required by Federal rule of Civil Procedure 33(b)(3).
3 Similarly, Defendant argues that a statement asserting the information already has been
4 provided is insufficient under Rule 33.

5 Plaintiff responds that he cannot provide more specific information concerning his
6 injuries and damages because Plaintiff does not maintain specific records concerning his
7 illnesses and injuries. Plaintiff also suggests that directing Defendant to the information
8 Defendant has subpoenaed from Plaintiff's medical providers or stating that Defendant has
9 this information in its possession is sufficient.

10 Plaintiff will be compelled to provide further responses to Defendant's Damage
11 Interrogatories. First, Plaintiff's responses to interrogatories 10 and 11 are impermissibly
12 vague. Defendant's interrogatories 10 and 11 request Plaintiff identify the specific physical,
13 mental, and emotional injuries, illnesses or conditions Plaintiff attributes to his claims against
14 Defendant. Plaintiff's response that he suffers from a "variety of stress related, physical,
15 mental and emotional illnesses, injuries and conditions" is not responsive to this
16 interrogatory, and a further response is warranted. Plaintiff is obligated to identify injuries he
17 contends are attributable to the alleged wrongful conduct of Defendant.

18 With respect to all of Defendant's Damage Interrogatories, Plaintiff's argument that
19 Defendant can discover this information through the subpoenaed medical records is without
20 merit. Rule 33(b)(3) requires Plaintiff to answer interrogatories "separately and fully" to "the
21 best of his ability from his memory and the documents in his possession." *Bryant v.*
22 *Gallagher*, 2013 WL 3422485 (E.D. Cal. Jul 8, 2013). That Defendant may be able to obtain
23 some information concerning Plaintiff's medical issues from other sources does not excuse
24 Plaintiff's obligation to answer interrogatories specifically seeking *Plaintiff's* basis for
25 claiming injuries and damages as a result of Defendant's conduct. The medical records may
26 identify medical conditions that Plaintiff may not attribute to Defendant's conduct.
27 Conversely, the medical records may not reference medical conditions Plaintiff contends are
28

1 caused by Defendant's conduct. Thus, Plaintiff is required to answer Defendant's Damage
2 Interrogatories to the best of his abilities.

3 Similarly, Plaintiff may not refuse to respond to Defendant's Damage Interrogatories
4 because Plaintiff believes Defendant may already possess this information. "A requested
5 party may not refuse to respond to a requesting party's discovery request on the ground that
6 the requested information is in the possession of the requesting party." *Bretana v.*
7 *International Collection Corp.*, 2008 WL 4334710 (N.D. Cal. Sept. 22, 2008), citing
8 *Davidson v. Goord*, 215 F.R.D. 73, 77 (W.D.N.Y.2003). Defendant is entitled to the
9 information Plaintiff possesses.

10 Accordingly, this Court finds Plaintiff's responses to Defendant's Damage
11 interrogatories noncompliant with Rule 33. Plaintiff is compelled to provide further
12 responses.

13 **2. Defendant's Contention Interrogatories**

14 Set Two of Defendant's Special Interrogatories poses three questions concerning
15 Plaintiff's contention that Defendant discriminated against Plaintiff. Those interrogatories
16 are as follows:

17
18 **SPECIAL INTERROGATORY NO. 23**

19 State all facts which support YOUR contention that the DISTRICT intentionally
20 discriminated against YOU based on YOUR African-American race in connection
21 with the DISTRICT'S decisions not to award its all sports officiating services
22 contract to YOU from January 1, 2011 to the present.

23 **Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 23:**

24 Plaintiff's information was previously provided to Defendants

25
26 **SPECIAL INTERROGATORY NO. 24**

27 IDENTIFY each and every person who has knowledge of the facts on which you base
28 your contention that the DISTRICT has intentionally discriminated against you based
29 on your Afro-American race in connection with the DISTRICT'S decisions not to
30 award its all sports officiating services contract to YOU from January 1, 2011 to the
31 present.

32 **Plaintiff's Response to Plaintiff's Response to Special Interrogatory No. 24:**

33 Plaintiff's information was previously provided to Defendants

1 **SPECIAL INTERROGATORY NO. 25**

2 LIST all DOCUMENTS that support your contention that the DISTRICT has
3 intentionally discriminated against you based on your Afro-American race in
4 connection with the DISTRICT’S decisions not to award its all sports officiating
5 services contract to YOU from January 1, 2011 to the present.

6 **Plaintiff’s Response to Plaintiff’s Response to Special Interrogatory No. 25:**

7 Plaintiff’s information was previously to Defendants

8 Defendant argues it is entitled to information supporting Plaintiff’s claim that he
9 suffered damages as a result of discrimination. Plaintiff responds that Defendant already
10 possesses the information sought in the Contention Interrogatories.

11 Plaintiff will be compelled to provide further responses to Defendant’s Contention
12 Interrogatories. Discussed above, Rule 33(b)(3) requires Plaintiff to answer interrogatories
13 “separately and fully” to “the best of his ability from his memory and the documents in his
14 possession.” *Bryant v. Gallagher*, 2013 WL 3422485 (E.D. Cal. Jul 8, 2013). Plaintiff may
15 not refuse to respond to the Contention Interrogatories because Defendant may already
16 possess the information. *Gerawan Farming, Inc. v. Rehrig Pacific Co.*, 2013 WL 398740
17 (E.D. Cal. Jan 31, 2013).

18 **C. Sanctions**

19 Defendant requests sanctions for having to bring this motion to compel. Federal Rule
20 of Civil Procedure 37(a) provides that if the Court grants a motion to compel discovery,
21 reasonable costs and attorney’s fees should be imposed unless the court finds (1) the motion
22 was filed without a good faith effort to obtain the discovery without court intervention, (2)
23 the objection was substantially justified, or (3) other circumstances make an award of
24 expenses unjust. Fed. R. Civ. P. 37(a)(5)(A); *United States EEOC v. Caesars Entm’t, Inc.*,
25 237 F.R.D. 428, 435 (D.Nev.2006).

26 While the conduct of pro se litigants is often evaluated under a more lenient standard,
27 pro se litigants are not excused from compliance with the federal rules. *See King v. Atiyeh*,
28 814 F.2d 565, 567 (9th Cir.1986) (stating that although courts afford them greater latitude for
error, “[p]ro se litigants must follow the same rules of procedure that govern other litigants”).
However, courts in this Circuit find that where a pro se’s failure to properly respond to
discovery or otherwise comply with federal or local rules is not the result of bad faith or

1 harassment, sanctions are not appropriate. *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170
2 (9th Cir. 1996) (“a district court can properly consider a plaintiff’s pro se status in assessing
3 sanctions”); *see also, Williams v. Woodford*, 2010 WL 2490951 (E.D. Cal., June 16, 2010)
4 (declining to impose sanctions where there is no evidence of bad faith); *Gordon v. County of*
5 *Alameda*, 2007 WL 1750207 (N.D. Cal., June 15, 2007) (imposing sanctions on a pro se
6 litigant when there was evidence of bad faith).

7 Plaintiff’s failure to respond adequately to Defendant’s interrogatories does not
8 appear to be the result of bad faith or harassment. Rather, Plaintiff’s discovery failures are
9 reasonably attributable to his pro se status and limited legal expertise. Moreover, Plaintiff
10 appears to have actively participated in meet and confer efforts and while Plaintiff’s
11 responses ultimately were unsatisfactory, there is nothing to suggest Plaintiff did not make a
12 good faith effort to properly respond to Defendant’s interrogatories. Thus, sanctions are not
13 appropriate.

14 **CONCLUSION**

15 Based on the foregoing, Defendant’s Motion to Compel Further Responses to Set
16 Two of Defendant’s Special Interrogatories (Doc. 101) is GRANTED. Plaintiff shall provide
17 amended responses to Set Two of Defendant’s Interrogatories on or before August 16, 2013.
18 Defendant’s request for sanctions is DENIED.
19 IT IS SO ORDERED.

20 Dated: July 24, 2013

/s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE