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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA  
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11 BILAL AHDOM, ) 1:09-cv-01874-AWI-BAM (PC)  
12 Plaintiff, )  
13 v. ) ORDER GRANTING DEFENDANT  
14 S. LOPEZ, et al., ) SHITTU'S MOTION TO COMPEL  
15 Defendants. ) RESPONSES TO INTERROGATORIES  
16 ) AND DENYING REQUEST FOR  
17 ) SANCTIONS WITHOUT PREJUDICE  
18 )  
19 ) (ECF No. 171)  
20 )  
21 ) **THIRTY-DAY DEADLINE**  
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19 Plaintiff Bilal Ahdom (“Plaintiff”), a state prisoner proceeding pro se and in forma  
20 pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on  
21 Plaintiff’s claims against Defendants Schaefer, Araich, Chen, Shittu, and Ashby for deliberate  
22 indifference to serious medical needs in violation of the Eighth Amendment.

23 Currently before the Court is a motion to compel Plaintiff’s responses to Defendant  
24 Shittu’s second set of interrogatories and requests for admissions.<sup>1</sup> (ECF No. 171.) Plaintiff did  
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26 <sup>1</sup> Although there is a pending interlocutory appeal, the Court is not divested of jurisdiction to address this  
27 motion. See Britton v. Co-op Banking Grp., 916 F.2d 1405, 1412 (9th Cir. 1990) (“an appeal of an interlocutory  
28 order does not ordinarily deprive the district court of jurisdiction except with regard to the matters that are the  
subject of the appeal”); Alice L. v. Dusek, 492 F.3d 563, 564–65 (5th Cir. 2007) (an interlocutory appeal “only  
divests the district court of jurisdiction over those aspects of the case on appeal.”). The interlocutory appeal relates

1 not respond to the motion. Therefore, on April 20, 2016, the Court ordered Plaintiff to file an  
2 opposition or statement of non-opposition to Defendant Shittu's motion (and other pending  
3 discovery motions). (ECF No. 175.)

4 On June 3, 2016, Plaintiff responded, and explained that on or about May 19, 2016, he  
5 mistakenly mailed to the Court his responses to Defendant's discovery requests in lieu of an  
6 opposition or statement of non-opposition. The discovery responses were returned to him on or  
7 around May 27, 2016, at which point he realized he misinterpreted the Court's order. Plaintiff  
8 requested another opportunity to respond to the pending discovery motions. (ECF No. 179.)  
9 The Court granted Plaintiff's request, and expressed its hope that Plaintiff had sent Defendants  
10 some discovery responses that may have eliminated some or all of the parties' discovery  
11 disputes. (ECF No. 184.)

12 On October 17, 2016, Plaintiff filed a statement asserting that he posed "no opposition to  
13 the [defendant's] motion to compel discovery." (ECF No. 190.)

14 On July 24, 2017, in response to an order from the Court, Defendant Shittu submitted a  
15 declaration from counsel indicating that Plaintiff had not submitted any new responses to the  
16 discovery requests that are the subject of Defendant Shittu's pending discovery motion. (ECF  
17 No. 196.)

18 Defendant Shittu's motion to compel (ECF No. 171) is deemed submitted. Local Rule  
19 230(l).

20 **I. Motion to Compel**

21 On January 13, 2016, Defendant Shittu propounded a second set of interrogatories and  
22 requests for admissions on Plaintiff. (ECF No. 171-2, Declaration of Lucas L. Hennes ("Hennes  
23 Decl.") at ¶ 2 and Ex. A.) On February 17, 2016, defense counsel for Defendant Shittu was  
24 present at Plaintiff's deposition, which was conducted by counsel for Defendant Ashby. Despite  
25 indicating that there was no reason he could not provide testimony, Plaintiff refused to respond  
26 to any questions posed by counsel, citing his Fifth Amendment right against self-incrimination.

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28 solely to Plaintiff's requests for preliminary injunctive relief and a temporary restraining order, not to matters of  
discovery.

1 This included questions regarding his receipt of discovery propounded by Defendant Shittu.  
2 (ECF No. 171-2, Hennes Decl. at ¶ 3.) As a result of Plaintiff's failure to cooperate, defense  
3 counsel scheduled a telephone call with Plaintiff on February 25, 2016, to discuss Defendant  
4 Shittu's discovery requests. When asked about Defendant Shittu's discovery requests, Plaintiff  
5 refused to answer, stating that he would not respond to any questions unless ordered to do so by  
6 the Court. Plaintiff also invoked his Fifth Amendment right as to any questions counsel posed  
7 about whether Plaintiff intended to respond to Defendant Shittu's discovery requests. (Id. at ¶ 4  
8 and Ex. B.) To date, Plaintiff has not responded to Defendant Shittu's discovery requests.

9 The Court has reviewed both the interrogatories and the request for admissions  
10 propounded by Defendant Shittu, and finds them to be relevant and appropriate. Given  
11 Plaintiff's failure to provide any explanation or justification for his failure to respond—aside  
12 from a possible misunderstanding regarding the manner in which discovery is conducted—  
13 Defendant Shittu's motion to compel shall be granted.

14 **II. Request for Sanctions**

15 In addition to compelling responses to discovery, Defendant Shittu requests that this  
16 Court issue sanctions—either evidentiary or terminating—based on Plaintiff's failure to comply  
17 with the rules of discovery. Under Federal Rule of Civil Procedure 37(a)(5)(A), if the Court  
18 grants the motion to compel, the Court must require the party whose conduct necessitated the  
19 motion to pay the movant's reasonable expenses incurred in making the motion. Fed. R. Civ. P.  
20 37(a)(5)(A). However, the Court must not order this payment if, among other things, the  
21 opposing party's nondisclosure, response, or objection was substantially justified or other  
22 circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(A)(ii), (iii). Here, the  
23 Court finds that Plaintiff's pro se and in forma pauperis status make an award of expenses unjust.  
24 Although not entirely clear, Plaintiff may have believed that he did not need to respond to  
25 Defendant Shittu's discovery requests until ordered to do so by the Court. For these reasons,  
26 Defendant Shittu's request for sanctions shall be denied. However, if Plaintiff fails to comply  
27 with the Court's order compelling responses, Defendant Shittu is not precluded from seeking  
28 sanctions pursuant to Federal Rule of Civil Procedure 37(b)(2).

1                   **III. Conclusion and Order**

2                   For the reasons stated, IT IS HEREBY ORDERED as follows:

- 3                   1. Defendant Shittu's motion to compel (ECF No. 171) is GRANTED;
- 4                   2. Within **thirty (30) days** from the date of this order, Plaintiff shall serve responses,  
5                   without objections, to Defendant Shittu's Request for Admissions, Set Two, and  
6                   Interrogatories, Set Two.
- 7                   3. Defendant Shittu's request for sanctions pursuant to Federal Rule of Civil Procedure  
8                   37(a)(5)(A) is DENIED;
- 9                   4. If Plaintiff fails to comply with this order, Defendant Shittu is not precluded from  
10                  seeking appropriate sanctions pursuant to Federal Rule of Civil Procedure 37(b)(2);  
11                  and
- 12                  5. Plaintiff is cautioned that his failure to timely comply with this order and respond to  
13                  written discovery may result in monetary sanctions, evidentiary sanctions or dismissal  
14                  of this action.

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16                  IT IS SO ORDERED.

17                  Dated: August 16, 2017

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19                  /s/ Barbara A. McAuliffe

20                  UNITED STATES MAGISTRATE JUDGE

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