

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.

27
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).

