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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY NGUYEN,
Plaintiff,
v.
M. D. BITER,
Defendant.

Case No. 1:11-cv-00809-AWI-SKO (PC)

ORDER (1) DENYING MOTION TO COMPEL AND FOR SANCTIONS, (2) GRANTING IN PART MOTION TO PROPOUND ADDITIONAL INTERROGATORIES, LIMITED TO TWENTY, AND (3) GRANTING IN PART MOTION TO EXTEND DISCOVERY DEADLINE, LIMITED TO SERVICE, RESPONSE, AND MOTION RE TWENTY ADDITIONAL INTERROGATORIES

(Docs. 102, 104, 108, and 109)

I. Background

Plaintiff Anthony Nguyen (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 18, 2011. This action is proceeding against Defendant M. D. Biter (“Defendant”) for violation of the Eighth Amendment of the United States Constitution, a claim which arises from Plaintiff’s allegations that he was exposed to arsenic-contaminated water while at Kern Valley State Prison (“KVSP”) in Delano, California.¹

¹ Plaintiff is presently incarcerated at California State Prison-Centinel in Imperial.

1 On June 16, 2014, Plaintiff filed a motion seeking leave to propound interrogatories in
2 excess of the twenty-five already served. Fed. R. Civ. P. 33(a)(1). (Doc. 102.) In addition,
3 Plaintiff seeks a ninety-day extension of the discovery deadline, which expired on September 6,
4 2014. Fed. R. Civ. P. 16(b)(4). Defendant filed an opposition on July 3, 2014; and on July 18,
5 2014, Plaintiff filed a motion to compel combined with a reply to Defendant's opposition. Fed. R.
6 Civ. P. 37(a). (Docs. 103, 104.) Defendant filed an opposition to the motion to compel on August
7 4, 2014; and on August 13, 2014, Plaintiff filed a supplement to his motion to compel. (Docs.
8 105, 108.) On August 20, 2014, Plaintiff filed a second supplement to his motion to compel, and
9 Defendant filed an opposition on August 28, 2014. (Docs. 109, 110.)

10 The motions were submitted upon the record without oral argument pursuant to Local Rule
11 230(l).

12 **II. Discussion**

13 **A. Summary of Motions**

14 **1. Motion to Propound Excess Interrogatories**

15 Plaintiff propounded twenty-five separately enumerated interrogatories and he now seeks
16 leave to propound additional interrogatories on the ground that Defendant's response to his first
17 set was evasive and unsatisfactory, resulting in his need for additional interrogatories. (Doc. 102.)
18 Plaintiff's bare request for leave to serve additional interrogatories was not supported by a copy of
19 his first set or a copy of his proposed interrogatories. (*Id.*)

20 In his opposition, Defendant provided copies of Plaintiff's (1) interrogatories, set one; (2)
21 requests for admission, set one; (3) interrogatories, set two, and requests for the production of
22 documents, set one;² and (4) interrogatories, set three, along with Defendant's responses.
23 Defendant argues that Plaintiff's motion is procedurally deficient based on his failure to include
24 the interrogatories and to make a "particularized showing" regarding his need for additional
25 interrogatories. *Archer Daniels Midland Co. v. Aon Risk Svcs., Inc.*, 187 F.R.D. 578, 586-87
26 (D.Minn. 1999). Defendant contends that he responded to Plaintiff's first set of twenty-five
27 interrogatories, objecting to all but six and providing verified responses to the other nineteen.

28 ² Plaintiff combined interrogatories with requests for the production of documents.

1 Further, Defendant contends that in response to receiving what appeared to be an unfiled motion to
2 compel on April 25, 2014, counsel called Plaintiff on May 14, 2014, and attempted to meet and
3 confer with him to explain the responses and objections. Plaintiff thereafter served additional
4 discovery requests, which were received by counsel on June 18, 2014.

5 **2. Motions to Compel and for Sanctions**

6 On July 18, 2014, Plaintiff filed a motion to compel and for sanctions which also included
7 his reply to Defendant's opposition to his motion to propound additional interrogatories. (Doc.
8 104.) Plaintiff seeks an order requiring Defendant to respond to the interrogatories "initially
9 objected to and implicitly evaded," and he seeks monetary sanctions against Defendant for his
10 evasive responses. Fed. R. Civ. P. 37(a)(2)(A). (Doc. 104, p. 1.) Plaintiff also addresses
11 Defendant's opposition to his motion to serve additional interrogatories, and he identifies
12 interrogatory numbers 8, 10, 12, 15, 17, and 18 as the ones to which Defendant improperly
13 objected. (*Id.*, pp. 16-18.) Plaintiff submits a letter to counsel he contends evidences his attempt
14 to meet and confer with her over their discovery dispute without involving the Court, dated June
15 11, 2014; and Plaintiff contends that counsel's statement she is willing to work with him
16 informally is untrue because she failed to respond to his letter. (*Id.*, pp. 4-5, 17.)

17 In opposition to Plaintiff's motion to compel, Defendant addresses Plaintiff's arguments
18 concerning the six interrogatories which were objected to, and reasserts that counsel met and
19 conferred with Plaintiff but he filed a motion to compel before the Court issued a ruling on his
20 motion for leave to serve additional interrogatories. (Doc. 105.) Defendant contends that
21 sanctions are not warranted because he responded as fully as he could to Plaintiff's interrogatories
22 and he advanced valid objections, but Plaintiff filed his motion to compel in disregard of counsel's
23 offer to meet and confer informally. (*Id.*)

24 On August 13, 2014, Plaintiff filed a supplement to his motion to compel and for
25 sanctions, entitled "Revised Motion to Compel Disclosure and for Sanctions," and on August 20,
26 2014, Plaintiff filed another supplement to his motion for sanctions, entitled "Addendum to
27 Plaintiff's Motion for Sanctions." (Docs. 108, 109.) Plaintiff reasserts that Defendant's
28 objections to his interrogatories lack merit, and states that he is seeking sanctions under Fed. R.

1 Civ. P. 11(b), based on Defendant’s representation that he served complete responses to all the
2 interrogatories and on counsel’s representation that she was willing to resolve discovery disputes
3 informally with Plaintiff. (*Id.*) Plaintiff includes a prison record evidencing his inability to
4 arrange for telephone conferences at his own request. (Doc. 109, p. 3.)

5 Defendant filed an opposition to both motions on August 28, 2014. (Doc. 110.)

6 **B. Motion to Compel and for Sanctions³**

7 **1. Legal Standard**

8 The scope of discovery is broad but it is not without limits, *Republic of Ecuador v.*
9 *Mackay*, 742 F.3d 860, 866 (9th Cir. 2014) (citing *Shoen v. Shoen*, 5 F.3d 1289, 1292 (9th Cir.
10 1993)), and the Court is vested with broad discretion to manage discovery, *Dichter-Mad Family*
11 *Partners, LLP v. U.S.*, 709 F.3d 749, 751 (9th Cir. 2013) (per curiam), *cert. denied*, 134 S.Ct. 117;
12 *Hunt v. Cnty. of Orange*, 672 F.3d 606, 616 (9th Cir. 2012); *Survivor Media, Inc. v. Survivor*
13 *Prods.*, 406 F.3d 625, 635 (9th Cir. 2005); *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).
14 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s
15 claim or defense,” and “[r]elevant information need not be admissible at the trial if the discovery
16 appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P.
17 26(b)(1). Furthermore, “[f]or good cause, the court may order discovery of any matter relevant to
18 the subject matter involved in the action.” *Id.*

19 An interrogatory may relate to any matter that may be inquired into under Rule 26(b), and
20 an interrogatory is not objectionable merely because it asks for an opinion or contention that
21 relates to fact or the application of law to fact. Fed. R. Civ. P. 33(a)(2) (quotation marks omitted).
22 Parties are obligated to respond to interrogatories to the fullest extent possible under oath, Fed. R.
23 Civ. P. 33(b)(3), and any objections must be stated with specificity, Fed. R. Civ. P. 33(b)(4);
24 *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981). The responding party shall use common
25 sense and reason. *E.g.*, *Collins v. Wal-Mart Stores, Inc.*, No. 06-2466-CM-DJW, 2008 WL
26 1924935, *8 (D. Kan. Apr. 30, 2008). A responding party is not generally required to conduct

27 ³ The Court turns first to Plaintiff’s motion to compel because it impacts analysis of his request for leave to propound
28 additional interrogatories.

1 extensive research in order to answer an interrogatory, but a reasonable effort to respond must be
2 made. *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013); *L.H. v. Schwarzenegger*, No. S-
3 06-2042 LKK GGH, 2007 WL 2781132, *2 (E.D. Cal. Sep. 21, 2007). Further, the responding
4 party has a duty to supplement any responses if the information sought is later obtained or the
5 response provided needs correction. Fed. R. Civ. P. 26(e)(1)(A).

6 **2. ROGs 8, 10, 12, 15, 17, and 18**⁴

7 **ROG 8:** “What was your reaction to the 2008 Compliance Order from the Department of
8 Public Health?” (Doc. 103-2, Opp., Ex. 1.)

9 **Response:** “Responding party objects on the grounds that the interrogatory is vague,
10 ambiguous, and lacks foundation.” (*Id.*)

11 **Ruling:** Plaintiff’s motion to compel is denied.

12 Plaintiff was informed in discovery that Defendant was not employed by KVSP in 2008
13 and Defendant has represented that without further clarification, he is unable to answer the
14 interrogatory. (Doc. 103-2, Opp., court record p. 24:16-22.) That response is sufficient under the
15 circumstances.

16 **ROG 10:** “What stopped you from having a conscience and unduly expose plaintiff to the
17 unsafe drinking water at KVSP by ineffectively acting to resolve KVSP’s unsafe drinking water
18 issue at the time?” (Doc. 103-2, Opp., Ex. 1.)

19 **Response:** “Responding party objects on the grounds that the interrogatory is
20 argumentative, assumes facts not admitted, lacks foundation, and is unintelligible as framed.”
21 (*Id.*)

22 **Ruling:** Plaintiff’s motion to compel is denied.

23 While parties are required to use common sense and reason in interpreting discovery
24 requests, the Court agrees with Defendant that this interrogatory is unintelligible as drafted, and it
25 cannot be salvaged by any reasonable interpretation.

26 ⁴ In an exhibit attached to his motion to compel, Plaintiff marked some of the interrogatory responses, and Defendant
27 addressed those responses despite Plaintiff’s failure to specify them as at issue in his motion and despite the ambiguity
28 of the marks. The Court addresses only those six interrogatories Plaintiff identified as at issue in his motion. The
Court notes, however, that Defendant responded to the other nineteen interrogatories and those responses are facially
sufficient.

1 **ROG 12:** “Would you agree that an ineffective attempt to rectify a problem or meeting the
2 bare minimum of a compliance order resulting in the same in effect is nearly the same as doing
3 nothing at all to fix the problem?” (Doc. 103-2, Opp., Ex. 1.)

4 **Response:** “Responding party objects on the grounds that the request is vague, ambiguous,
5 argumentative, and calls for speculation.” (*Id.*)

6 **Ruling:** Plaintiff’s motion to compel is denied.

7 The interrogatory is vague and ambiguous, and it does not appear reasonably calculated to
8 lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1); *Survivor Media, Inc.*, 406
9 F.3d at 635.

10 **ROG 15:** “Of the three professions, which is the most qualified to authoritatively comment
11 on the adverse effects of exposure to toxic substances such as arsenic: the Warden of a prison, the
12 Chief Medical Officer of a prison, or a Toxicologist?” (Doc. 103-2, Opp., Ex. 1.)

13 **Response:** “Responding party objects on the grounds that the interrogatory calls for an
14 expert opinion and lacks foundation.” (*Id.*)

15 **Ruling:** Plaintiff’s motion to compel is denied.

16 This interrogatory impermissibly seeks a response that requires an expert opinion. *Gorton*
17 *v. Todd*, No. CIV S-08-3069 LKK GGH P, 2010 WL 234874, at *1-2 (E.D.Cal. 2010). The
18 relevance is also not readily discernible. Fed. R. Civ. P. 26(b)(1); *Survivor Media, Inc.*, 406 F.3d
19 at 635.

20 **ROG 17:** “Anti-prisoner sentiment: are able to admit to it?” (Doc. 103-2, Opp., Ex. 1.)

21 **Response:** “Responding party objects on the grounds that this is not an interrogatory and is
22 unintelligible as framed.”

23 **Ruling:** Plaintiff’s motion to compel is denied.

24 A request for an admission should be set forth as such, but regardless, this interrogatory is
25 unintelligible and ambiguous, and the relevance of the information sought is unclear. Fed. R. Civ.
26 P. 26(b)(1); *Survivor Media, Inc.*, 406 F.3d at 635.

27 **ROG 18:** “Is it reasonable to conclude accurately that if a Warden discreetly hates
28 prisoners and given the opportunity, he would act ineffectively in response to a situation that

1 posed a risk to prisoners – under – his custody’s health to personally or arbitrarily punish them
2 beyond the reach or scope of the law?” (Doc. 103-2, Opp., Ex. 1.)

3 **Response:** “Responding party objects on the grounds that the interrogatory is
4 argumentative, vague, ambiguous, and calls for speculation. Responding party further objects on
5 the ground that the interrogatory is an improper hypothetical.” (*Id.*)

6 **Ruling:** Plaintiff’s motion to compel is denied.

7 This interrogatory is vague, ambiguous, and unintelligible as framed.

8 **3. Sanctions**

9 If a motion to compel is granted, the moving party may be entitled to an award of
10 reasonable expenses actually incurred in moving to compel, but Plaintiff is not entitled to recoup
11 any expenses in light of the denial of his motion. Fed. R. Civ. P. 37(a)(5)(A). Moreover,
12 Plaintiff’s Rule 11 motion fails as a matter of law because it was filed in violation of the twenty-
13 one day “safe harbor provision,” Fed. R. Civ. P. 11(c)(2); *Holgate v. Baldwin*, 425 F.3d 671, 677-
14 78 (9th Cir. 2005), and there is no basis for sanctions under the Court’s inherent authority,
15 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43, 111 S.Ct. 2123 (1991); *Fink v. Gomez*, 239 F.3d 989,
16 993-94 (9th Cir. 2001).

17 Plaintiff’s contentions that Defendant’s responses and objections to his interrogatories, set
18 one, were improper and evasive lack merit, as does his contention that Defendant made
19 misstatements in his opposition. More specifically, while Plaintiff challenges defense counsel’s
20 representation that she is willing to work with Plaintiff informally to resolve their discovery
21 disputes as false and notes her failure to answer his letter, Plaintiff’s position is not supported by
22 the record. After receiving objections to Defendant’s interrogatory responses, counsel spoke with
23 Plaintiff by telephone on May 14, 2014, a meeting she treated as a meet and confer attempt; she
24 acknowledged receipt of Plaintiff’s subsequent letter dated June 10, 2014; and she stated she will
25 respond to Plaintiff’s letter after the Court resolves his pending motion.⁵ (Doc. 103-1, Opp.,
26 *Samson Dec.*, ¶¶8, 9, 15, 16; Doc. 104, Motion to Compel, Ex. 1.) This explanation is consistent
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28 ⁵ The letter at issue was dated July 11, 2014, but counsel’s description of the letter as dated July 10, 2014, is immaterial.

1 with counsel's stated willingness to informally meet and confer with Plaintiff, and given
2 Plaintiff's pending June 16 motion for leave to serve additional interrogatories, counsel's decision
3 that she would respond to Plaintiff's July 11 letter after the Court ruled presents no basis for
4 legitimate dispute. The Court notes that the parties are not required to meet and confer, although
5 they are encouraged to do so and the Court may, in its discretion, order them to do so. (Doc. 97,
6 Disc. & Sched. Order, ¶5.) Thus, Plaintiff lacks any entitlement to seek sanctions based on a
7 party's failure to engage in voluntary meet and confer attempts, notwithstanding the fact that the
8 record does not support Plaintiff's position.

9 Accordingly, Plaintiff's motion for sanctions is denied.

10 **C. Motion for Leave to Serve Interrogatories in Excess of Twenty-Five**

11 Next, Plaintiff seeks leave to propound interrogatories in excess of twenty-five. Fed. R.
12 Civ. P. 33(a). Although Plaintiff's motion was procedurally deficient, Defendant provided copies
13 of his responses to Plaintiff's second and third sets of interrogatories. (Docs. 103-2 & 103-4,
14 Opp., Exs. 3, 4.) Based on those exhibits, Plaintiff apparently seeks leave to propound an
15 additional thirty-nine interrogatories. (Doc. 103-2, court record pp. 29-36, Doc. 103-4, court
16 record pp. 64-71.)

17 Rule 33 limits interrogatories to twenty-five per party, including discrete subparts, but the
18 Court may grant leave to serve additional interrogatories to the extent consistent with Rule
19 26(b)(2). The limitation is not intended "to prevent needed discovery, but to provide judicial
20 scrutiny before parties make potentially excessive use of this discovery device," and "[i]n many
21 cases, it will be appropriate for the court to permit a larger number of interrogatories. . . ."
22 Advisory Committee Notes to the 1993 Amendments of Fed. R. Civ. P. 33.

23 Plaintiff is proceeding pro se and he is incarcerated, which affects his ability to draft
24 discovery with the precision of an attorney. It also entitles him to some additional leniency.
25 Discovery must be limited if it is unreasonably cumulative or duplicative, Fed. R. Civ. P.
26 26(b)(2)(C)(i), but that inquiry must be viewed through the lens of Plaintiff's pro se status. Pro se
27 litigants are necessarily accorded greater latitude than attorneys given their lesser skill set. The
28 Court will not overlook abuse of the discovery process, but neither will it rigidly apply the

1 interrogatory limit when the rule itself contemplates the propriety of additional interrogatories in
2 many cases.

3 While the *Archer Daniels Midland Co.* case cited by Defendant articulates the
4 “particularized showing” standard frequently utilized by courts, the issues in *Archer* differ
5 significantly from the issues in this case, and the decision does not compel the determination that
6 Plaintiff should be precluded from serving additional interrogatories. However, neither is Plaintiff
7 entitled to free rein in discovery by virtue of his pro se status. Where a litigant imprudently uses
8 the initial twenty-five interrogatories on irrelevant or tangential questions, or on interrogatories
9 which are abusive of the opposing party or the discovery process, the Court does not view a
10 subsequent motion for leave to propound additional interrogatories with favor.

11 Here, in balancing Plaintiff’s professed need for further discovery in the context of his
12 more limited skills as a pro se litigant with the Court’s duty to protect parties from abusive
13 discovery practices, the Court has reviewed Plaintiff’s second and third interrogatory sets and it
14 finds that allowing Plaintiff to propound an additional twenty interrogatories is fair and just on
15 balance. Not all of the decisions made by Plaintiff in drafting his sixty-four interrogatories were
16 prudent. Some of the interrogatories were unintelligible, some sought irrelevant information,
17 some were unreasonably cumulative or duplicative, and some were unduly antagonistic. If
18 Plaintiff chooses to forego well-drafted, relevant interrogatories in favor of questionable
19 interrogatories, the consequences are his to bear. Plaintiff is permitted only twenty additional
20 interrogatories, and the Court will not entertain another motion for additional interrogatories.

21 **D. Motion to Modify Scheduling Order to Extend Discovery**

22 The discovery deadline was September 6, 2014, and Plaintiff filed a timely motion for an
23 extension of the discovery deadline on June 16, 2014.⁶ A scheduling order “may be modified only
24 for good cause,” and by leave of court. Fed. R. Civ. P. 16(b)(4). “The schedule may be modified
25 ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” *Zivkovic*

26
27 ⁶ Plaintiff filed a motion for leave to file a supplemental complaint and for an extension of the discovery deadline on
28 September 15, 2014. Fed. R. Civ. P. 15(d), 16(b)(4). However, in light of the fact that Plaintiff filed a second motion
for leave to file a supplemental complaint on January 20, 2015, Plaintiff’s September 15 motion will be addressed in
conjunction with the January 20 motion, once the latter motion is submitted. Local Rule 230(l). (Docs. 115, 130.)

1 v. *Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting *Johnson v.*
2 *Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992)). “If the party seeking the
3 modification ‘was not diligent, the inquiry should end’ and the motion to modify should not be
4 granted.” *Id.*

5 Plaintiff’s bare request for a ninety-day extension of the discovery deadline is denied, as
6 Plaintiff’s general desire to continue engaging in discovery does not provide good cause for an
7 extension of the deadline. Fed. R. Civ. P. 16(b)(4); *Zivkovic*, 302 F.3d at 1087. However, in light
8 of the ruling allowing Plaintiff to propound twenty additional interrogatories, the discovery
9 deadline is extended for the limited purpose of providing Plaintiff thirty days within which to
10 either serve twenty interrogatories on Defendant or serve Defendant with a notice specifically
11 informing him which twenty interrogatories from sets two and three he has selected for response.
12 Defendant has thirty days from the date of service of Plaintiff’s interrogatories or notice to serve
13 responses, and Plaintiff has thirty days from the date of service of the responses to file a motion to
14 compel, if necessary.

15 **III. Order**

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. Plaintiff’s motion to compel and for sanctions is DENIED;
- 18 2. Plaintiff’s motion for leave to propound interrogatories in excess of twenty-five is
19 GRANTED in part and Plaintiff may propound twenty additional interrogatories;
20 and
- 21 3. Plaintiff’s motion for a ninety-day extension of the discovery deadline is
22 GRANTED in part only in that the discovery deadline is extended for the limited
23 purpose of bringing finality to Plaintiff’s twenty additional interrogatories as
24 follows:
 - 25 a. Within **thirty (30) days** from the date of service of this order, Plaintiff shall
26 either serve his twenty additional interrogatories or serve Defendant with a
27 notice identifying which twenty interrogatories from sets two and three
28 Plaintiff has selected for response;

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- b. Within **thirty (30) days** from the date of service of the twenty interrogatories or the notice identifying twenty interrogatories from sets two and three, Defendant shall serve a response; and
- c. The deadline to file a motion to compel, if necessary, is **thirty (30) days** from the date of service of Defendant's response to the twenty interrogatories.

IT IS SO ORDERED.

Dated: January 26, 2015

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE