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7	<b>UNITED STATES DISTRICT COURT</b>			
8	BEASTERN DISTRICT OF CALIFORNIA			
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10	QUINCY SIMS,	Case No. 1:12-cv-01904-LJO-SKO (PC)		
11	Plaintiff,	ORDER DENYING MOTION TO COMPEL RESPONSE TO INTERROGATORIES IN		
12	v.	EXCESS OF TWENTY-FIVE, DIRECTING DEFENDANT TO FILE NOTICE OF		
13	M. CABRERA,	REASONABLE EXPENSES INCURRED WITHIN TWENTY DAYS, AND		
14	Defendant.	GRANTING PLAINTIFF THIRTY DAYS THEREAFTER TO FILE RESPONSE		
15		(Doc. 37)		
16	/	(1000.37)		
17	I. <u>Background</u>			
18	8 Plaintiff Quincy Sims ("Plaintiff"), a state prisoner proceeding pro se and in forma			
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20	action for damages is proceeding against Defendant M. Cabrera ("Defendant") for failing to			
21	<sup>1</sup> protect Plaintiff from the threat of harm by gang members or affiliates while he was at Kern			
22	2 Valley State Prison, in violation of the Eighth Amendment of the United States Constitution.			
23	3 On August 15, 2014, Plaintiff filed a motion to compel. Fed. R. Civ. P. 37(a)(3)(B)(iii).			
24	<sup>4</sup> Defendant filed an opposition on September 5, 2014, and the motion was submitted on the record			
25	5 without oral argument pursuant to Local Rule $230(l)$ . For the reason which follows, the motion is			
26	denied.			
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## 1 II. Discussion

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## Plaintiff's Motion to Compel

In his motion, Plaintiff moves for an order compelling Defendant to respond to his interrogatories, set two, numbers 1 through 21, which he served on served July 18, 2014.<sup>1</sup> Fed. R. Civ. P. 37(a)(3)(B)(iii). In opposition, Defendant states that he previously responded to Plaintiff's interrogatories, set one, numbers 1 through 25; he did not agree to respond to interrogatories in the excess of twenty-five, and Plaintiff did not obtain leave of court to serve interrogatories in the excess of twenty-five. Fed. R. Civ. P. 33(a).

9 The scope of discovery is broad. Republic of Ecuador v. Mackay, 742 F.3d 860, 866 (9th 10 Cir. 2014) (citing Shoen v. Shoen, 5 F.3d 1289, 1292 (9th Cir. 1993)). "Parties may obtain 11 discovery regarding any nonprivileged matter that is relevant to any party's claim or defense," and 12 "[r]elevant information need not be admissible at the trial if the discovery appears reasonably 13 calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). 14 Furthermore, "[f]or good cause, the court may order discovery of any matter relevant to the 15 subject matter involved in the action." Id. Relevant here, however, Rule 33(a) of the Federal Rules of Civil Procedure limits interrogatories to twenty-five per party, including discrete 16 17 subparts, although the Court may grant leave to serve additional interrogatories to the extent 18 consistent with Rule 26(b)(2).

Defendant submitted evidence that he responded to Plaintiff's interrogatories, set one, 1 through 25, and he is not required to respond to any additional interrogatories in the absence of a stipulation, which did not occur, or a court order. (Doc. 38, Opp., Exs. A & B.) Plaintiff did not file a reply and based on the record, the Court finds that Defendant was not required to respond to Plaintiff's interrogatories, set two, because they exceeded the limit in Rule 33(a). As such, Plaintiff is not entitled to an order compelling Defendant to respond or to any reasonable expenses incurred in bringing the motion to compel. Fed. R. Civ. P. 37(a)(5)(A).

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<sup>&</sup>lt;sup>1</sup> The parties have forty-five days to serve discovery responses and had Plaintiff been entitled to a response, his motion to compel would have been subject to denial as premature. (Doc. 22.)

## B. <u>Reasonable Expenses Incurred in Opposing Motion</u>

2	If a motion to compel is denied, the Court must, after providing an opportunity to be heard,		
3	require the movant to pay the party who opposed the motion the reasonable expenses incurred in		
4	opposing the motion, including attorney's fees. Fed. R. Civ. P. 37(a)(5)(B) (quotation marks		
5	omitted). Payment may not be ordered if the motion was substantially justified or other		
6	circumstances make the award unjust. Id. (quotation marks omitted).		
7	In light of the denial of Plaintiff's motion to compel, Defendant has twenty days to file a		
8	notice of reasonable expenses incurred, and Plaintiff has thirty days from the filing of the notice to		
9	be heard on the issue.		
10	III. <u>Order</u>		
11	Accordingly, based on the foregoing, it is HEREBY ORDERED that:		
12	1. Plaintiff's motion to compel is DENIED;		
13	2. Defendant has <b>twenty</b> (20) days from the date of service of this order within which		
14	to file a notice of reasonable expenses incurred in opposing Plaintiff's motion to		
15	compel; and		
16	3. Plaintiff has <b>thirty (30) days</b> from the date of service of the notice within which to		
17	file a response.		
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19	IT IS SO ORDERED.		
20	Dated: December 8, 2014 /s/ Sheila K. Oberto UNITED STATES MAGISTRATE JUDGE		
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