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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

QUINCY SIMS,

Plaintiff,

v.

M. CABRERA,

Defendant.

Case No. 1:12-cv-01904-LJO-SKO (PC)

ORDER DENYING MOTION TO COMPEL
RESPONSE TO INTERROGATORIES IN
EXCESS OF TWENTY-FIVE, DIRECTING
DEFENDANT TO FILE NOTICE OF
REASONABLE EXPENSES INCURRED
WITHIN TWENTY DAYS, AND
GRANTING PLAINTIFF THIRTY DAYS
THEREAFTER TO FILE RESPONSE

(Doc. 37)

I. Background

Plaintiff Quincy Sims (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 21, 2012. This action for damages is proceeding against Defendant M. Cabrera (“Defendant”) for failing to protect Plaintiff from the threat of harm by gang members or affiliates while he was at Kern Valley State Prison, in violation of the Eighth Amendment of the United States Constitution.

On August 15, 2014, Plaintiff filed a motion to compel. Fed. R. Civ. P. 37(a)(3)(B)(iii). Defendant filed an opposition on September 5, 2014, and the motion was submitted on the record without oral argument pursuant to Local Rule 230(l). For the reason which follows, the motion is denied.

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1 **II. Discussion**

2 **1. Plaintiff’s Motion to Compel**

3 In his motion, Plaintiff moves for an order compelling Defendant to respond to his
4 interrogatories, set two, numbers 1 through 21, which he served on served July 18, 2014.¹ Fed. R.
5 Civ. P. 37(a)(3)(B)(iii). In opposition, Defendant states that he previously responded to Plaintiff’s
6 interrogatories, set one, numbers 1 through 25; he did not agree to respond to interrogatories in the
7 excess of twenty-five, and Plaintiff did not obtain leave of court to serve interrogatories in the
8 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
16 Rules of Civil Procedure limits interrogatories to twenty-five per party, including discrete
17 subparts, although the Court may grant leave to serve additional interrogatories to the extent
18 consistent with Rule 26(b)(2).

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

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28 ¹ 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.)

