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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

THURMAN GAINES,	)	Case No.: 1:15-cv-00587-LJO-SAB (PC)
Plaintiff,	)	
v.	)	ORDER DENYING DEFENDANT’S AUGUST 24,
	)	2017 MOTION FOR SANCTIONS, WITHOUT
DR. HOROWITZ,	)	PREJUDICE (ECF No. 40)
	)	
Defendant.	)	
	)	
	)	

**I.  
INTRODUCTION**

Plaintiff Thurman Gaines is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action currently proceeds on Plaintiff’s Second Amended Complaint against Dr. E. Horowitz for deliberate indifference in violation of the Eighth Amendment. (ECF No. 19.)

**II.  
RELEVANT BACKGROUND**

On July 14, 2017, the Court issued an order granting Defendant’s motion to compel discovery responses regarding the exhaustion of administrative remedies, and ordered Plaintiff to produce them within thirty (30) days of that order. (ECF No. 38.)

1 On August 24, 2017, Defendant filed a motion for sanctions against Plaintiff, arguing that  
2 Plaintiff failed to produce discovery responses in violation of the Court's July 14, 2017 order. (ECF  
3 No. 40.) Specifically, Defendant requested terminating sanctions or, in the alternative, evidentiary  
4 sanctions against Plaintiff.

5 Plaintiff did not file any response or opposition to the motion for sanctions within the time  
6 permitted. Instead, on September 18, 2017, Plaintiff filed a notice of voluntary dismissal without  
7 prejudice. (ECF No. 42.) Following several rulings regarding Plaintiff's request to voluntarily dismiss,  
8 (ECF No. 43, 44, 46), on December 7, 2017, Plaintiff filed a request for withdrawal of his motion to  
9 voluntarily dismiss this action, (ECF No. 47). On December 20, 2017, the District Judge granted  
10 Plaintiff's request to withdraw his motion for voluntary dismissal, and referred the action to the  
11 undersigned for further proceedings. (ECF No. 50.)

12 On the same date that Plaintiff filed his request to withdraw his motion to voluntarily dismiss  
13 this action, Plaintiff also filed a notice of compliance, indicating that he had produced the discovery  
14 responses as ordered in the Court's July 14, 2017 and October 17, 2017 orders. (ECF No. 48.)

### 15 III.

### 16 DISCUSSION

17 As noted above, on August 24, 2017, prior to Plaintiff filing his motion for voluntary dismissal  
18 of this action, Defendant filed a motion for sanctions. (ECF No. 40.) In that motion, Defendant  
19 requested terminating sanctions or, in the alternative, evidentiary sanctions against Plaintiff, due to  
20 Plaintiff's failure to provide the discovery responses as ordered by the Court in its July 14, 2017 order.

21 Since Defendant's first motion for sanctions was filed, on December 18, 2017, Defendant filed  
22 a second motion for sanctions, based on the new facts and circumstances of the case. (ECF No. 49.)  
23 Specifically, despite Plaintiff filing a notice of compliance that he has produced the discovery  
24 responses as required by the Court's July 14, 2017 and October 17, 2017 orders, Defendant disputes  
25 whether Plaintiff has in fact fully complied. As a result, Defendant seeks terminating sanctions, or, in  
26 the alternative, evidentiary sanctions against Plaintiff as a result of the alleged non-compliance. (ECF  
27 No. 49.)

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1 Accordinglly, the facts and circumstance of this case have changed since Defendant's original  
2 motion for sanctions was filed, and Defendant has now filed a new, superseding motion for sanctions  
3 addressing the current posture of the case. Based on the foregoing, the Court will deny Defendant's  
4 initial motion for sanctions filed on August 24, 2017, without prejudice.

5 In making this ruling, the Court takes no position on the merits of Defendant's December 18,  
6 2017 motion for sanctions. The Court will make findings and recommendations on Defendants'  
7 December 18, 2017 motion for sanctions in due course, after the expiration of the time for briefing.  
8 Local Rule 230(1) (a party opposing a motion shall respond within twenty-one days after the date of  
9 service of the motion, and the moving party may file and serve a reply within seven days of the  
10 opposition being filed).

11 IV.

12 CONCLUSION

13 For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion for sanctions,  
14 filed on August 24, 2017 (ECF No. 40), is denied, without prejudice.

15  
16 IT IS SO ORDERED.

17 Dated: **December 20, 2017**

18   
19 UNITED STATES MAGISTRATE JUDGE