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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MITCHELL GARRAWAY,

12 Plaintiff,

13 vs.

14 JACQUILINE CIUFO, et al.,

15 Defendants.
16

1:17-cv-00533-DAD-GSA-PC

**ORDER DENYING PLAINTIFF’S MOTION
TO COMPEL, WITHOUT PREJUDICE
(ECF No. 66.)**

17 **I. BACKGROUND**

18 Plaintiff is a federal prisoner proceeding *pro se* in this civil rights action pursuant to
19 Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). This case now proceeds with Plaintiff’s
20 original Complaint filed on April 17, 2017, against defendants Jacqueline Ciufu (Unit Manager),
21 K. Miller (Corrections Officer), and Lieutenant J. Zaragoza (collectively, “Defendants”), for
22 failure to protect Plaintiff in violation of the Eighth Amendment. (ECF No. 1.)

23 On November 27, 2018, the court issued a discovery and scheduling order setting forth a
24 discovery deadline of May 25, 2019, and a dispositive motions deadline of July 27, 2019. (ECF
25 No. 26.) On February 26, 2019, Defendants filed a motion for judgment on the pleadings,
26 concerning whether Plaintiff’s Bivens claims were barred under Ziglar v. Abassi, 137 S.Ct. 1843
27 (2017). (ECF No. 42.) On April 1, 2019, the court issued an order staying discovery with the
28 exception of discovery related to whether Plaintiff failed to state a claim under Abassi, pending

1 resolution of the motion for judgment on the pleadings. (ECF No. 65.) The parties were advised
2 that if they had been served with discovery requests that did not relate to Abassi they should
3 retain the discovery for later consideration after the stay had been lifted. (ECF No. 65 at 3:22-
4 23.)

5 On April 1, 2019, Plaintiff filed a motion to compel. (ECF No. 66.) The motion to
6 compel did not concern the Abassi issue, and Defendants have not yet filed a response to the
7 motion.

8 On February 21, 2020, the court resolved Defendants' motion for judgment on the
9 pleadings. (ECF No. 94.) Accordingly, on March 4, 2020, the court issued an order lifting the
10 stay of discovery, setting a new discovery deadline of June 5, 2020, and setting a new dispositive
11 motions deadline of August 5, 2020. (ECF No. 97.)

12 Plaintiff's motion to compel is now before the court.

13 **II. MOTION TO COMPEL**

14 **A. Legal Standards**

15 The Federal Rules of Civil Procedure govern discovery in this civil action. The discovery
16 process is subject to the overriding limitation of good faith, and callous disregard of discovery
17 responsibilities cannot be condoned. Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d 1242,
18 1246 (9th Cir. 1981) (quotation marks and citation omitted). Parties may obtain discovery
19 regarding any nonprivileged matter that is relevant to any party's claim or defense, including the
20 existence, description, nature, custody, condition, and location of any documents or other
21 tangible things and the identity and location of persons who know of any discoverable matter.
22 Fed. R. Civ. P. 26(b)(1) (quotation marks omitted). For good cause, the court may order
23 discovery of any matter relevant to the subject matter involved in the action. Id. (quotation
24 marks omitted). Relevant information need not be admissible at the trial if the discovery appears
25 reasonably calculated to lead to the discovery of admissible evidence. Id. (quotation marks
26 omitted).

27 Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, a party propounding
28 discovery may seek an order compelling disclosure when an opposing party has failed to respond

1 or has provided evasive or incomplete responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or
2 incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or
3 respond.” Fed. R. Civ. P. 37(a)(4). The moving party bears the burden of demonstrating “actual
4 and substantial prejudice” from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732,
5 751 (9th Cir. 2002) (citations omitted).

6 Generally, if the responding party objects to a discovery request, the party moving to
7 compel bears the burden of demonstrating why the objections are not justified. E.g., Grabek v.
8 Dickinson, No. CIV S-10-2892 GGH P, 2012 WL 113799, at *1 (E.D. Cal. Jan. 13, 2012);
9 Womack v. Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at *3; Mitchell v. Felker,
10 No. CV 08-119RAJ, 2010 WL 3835765, at *2 (E.D. Cal. Sep. 29, 2010); Ellis v. Cambra, No.
11 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008). This requires
12 the moving party to inform the court which discovery requests are the subject of the motion to
13 compel, and, for each disputed response, why the information sought is relevant and why the
14 responding party’s objections are not meritorious. Id. However, the court is vested with broad
15 discretion to manage discovery and notwithstanding these procedures, and Plaintiff is entitled to
16 leniency as a *pro se* litigator; therefore, to the extent possible, the court endeavors to resolve his
17 motion to compel on its merits. Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012);
18 Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir. 2005); Hallett, 296
19 F.3d at 751.

20 **B. Plaintiff’s Motion**

21 Plaintiff argues that Defendants have provided evasive responses to his Requests for
22 Admissions and Interrogatories, which are attached as exhibits to the motion to compel. Plaintiff
23 asserts that Defendants refuse to supply him with the names and current places of BOP
24 employment for potential witnesses whose testimony Plaintiff believes is crucial to his case.
25 Plaintiff claims that Defendants have denied him a reasonable opportunity to present evidence
26 that he believes is pertinent to his case. Plaintiff requests a court order compelling Defendants
27 to disclose all of the information Plaintiff requested in his Requests for Admissions and
28 Interrogatories attached to his motion to compel as Exhibits E, F, G, and H.

1 As the moving party, Plaintiff bears the burden of informing the court which discovery
2 requests are the subject of his motion to compel and, for *each* disputed response, why
3 Defendants' objection is not justified. Plaintiff has not done so. Plaintiff may not simply assert
4 that he has served discovery requests, that he is dissatisfied with Defendants' objections, and that
5 he wants an order compelling responses. For these reasons, Plaintiff's motion to compel shall be
6 denied as procedurally defective, without prejudice to renewal of the motion at a later stage of
7 the proceedings.

8 **III. CONCLUSION**

9 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion to compel,
10 filed on April 1, 2019, is DENIED as procedurally defective, without prejudice to renewal of the
11 motion at a later stage of the proceedings.

12
13 IT IS SO ORDERED.

14 Dated: March 9, 2020

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE