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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANTOINE L. CHAMBERS,

Plaintiff,

v.

JANSSEN PHARMACEUTICALS, INC.,  
JANSSEN LP, JOHNSON & JOHNSON &  
JOHNSON RESEARCH AND DEVELOPMENT,  
LLC, AND DOES 1-5

Defendants.

Case No.: 16CV762-JAH(BLM)

**ORDER GRANTING DEFENDANTS'  
MOTION TO COMPEL DISCOVERY  
RESPONSES**

**[ECF No. 30]**

Currently before the Court is Defendants' April 18, 2018 motion to compel discovery responses. ECF No. 30-1 ("MTC"). For the reasons set forth below, Defendants' motion is **GRANTED.**

**BACKGROUND**

The instant matter was initiated on March 31, 2016 when Plaintiff sued Defendants for strict liability, negligence, negligence per se, false advertising, fraudulent concealments, fraudulent misrepresentation, failure to warn, breach of express and implied warranties, unfair business practices, negligent and intentional infliction of emotional distress, and reckless endangerment related to Plaintiff's use of the prescription medication Risperdal. ECF No. 1. Plaintiff alleges that he suffered numerous injuries due to his use of Risperdal and seeks compensatory and punitive damages, attorneys' fees and costs, and other relief as the Court

1 may deem just and proper. Id.

2 On March 7, 2017, the Court issued a Scheduling Order Regarding Discovery and Other  
3 Pretrial Proceedings. ECF No. 18. On May 2, 2017, Defendants served Plaintiff with  
4 Interrogatories, Set One and Requests for Production of Documents, Set One. MTC at 3; see  
5 also ECF No. 30-2, Declaration of Steven M. Selna, In Support of Defendants' Motion to Compel  
6 Discovery ("Selna Decl.") at Exhs. A and B. On July 25, 2017, after Plaintiff failed to respond,  
7 Defendants sent Plaintiff a meet and confer letter regarding the delinquent discovery responses.  
8 MTC at 3. Defendants also attempted to call Plaintiff about the discovery responses. Id. Plaintiff  
9 did not respond. Id. On September 12, 2017, Plaintiff appeared for his deposition. Id. At the  
10 deposition, Plaintiff stated that he had not received the discovery at issue or the meet and confer  
11 letter and noted that the address Defendants had been given when Plaintiff's counsel withdrew  
12 was incorrect.<sup>1</sup> Id.

13 On October 19, 2017, the parties filed a Joint Motion to Continue Deadlines in the  
14 Scheduling Order to provide the parties with additional time to complete discovery. ECF No. 21.  
15 The Court granted the motion extending the case deadlines for approximately ninety days. ECF  
16 No. 23. Defendants continued to have difficulty communicating with Plaintiff who failed to  
17 respond to multiple phone calls and emails until January 10, 2018. MTC at 4. On January 18,  
18 2018, the parties filed another Joint Motion to Continue Deadlines in the Scheduling Order. ECF  
19 No. 24. That motion was granted on January 19, 2018. ECF No. 26.

20 On January 22, 2018, Defendants re-served their Interrogatories, Set One and Requests  
21 for Production of Documents, Set One. MTC at 4; see also Selna Decl. at Exhs. A and B. Plaintiff  
22 failed to respond. MTC at 4. During a telephonic meet and confer with Plaintiff on March 22,  
23 2018, Plaintiff informed Defendants that he again did not receive their discovery requests. Id.  
24 at 5. During the call, in which Judge Major's law clerk participated, Defendants emailed the

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27 <sup>1</sup> Plaintiff was represented by counsel when he initiated this case. See Docket. On January 3,  
28 2017, Plaintiff's counsel filed a motion to withdraw as counsel without substitution. ECF No. 6.  
The motion was denied as moot on March 6, 2017 when Plaintiff agreed to proceed *pro se*. ECF  
No. 17.

1 discovery requests to Plaintiff who confirmed receipt. Id. Plaintiff also agreed to respond to  
2 defense counsel within ten business days with a date by which he would serve responses to the  
3 requests. As of the filing of this motion, Defendants have not received responses to their  
4 discovery requests. Id. After Defendants filed their motion to compel, the Court issued a briefing  
5 schedule requiring Plaintiff to file his opposition by May 4, 2018. ECF No. 31. Plaintiff did not  
6 file an opposition or any other document. See Docket.

### 7 **LEGAL STANDARD**

8 The scope of discovery under the Federal Rules of Civil Procedure is defined as follows:

9 Parties may obtain discovery regarding any nonprivileged matter that  
10 is relevant to any party's claim or defense and proportional to the  
11 needs of the case, considering the importance of the issues at stake  
12 in the action, the amount in controversy, the parties' relative access  
13 to relevant information, the parties' resources, the importance of the  
14 discovery in resolving the issues, and whether the burden or expense  
of the proposed discovery outweighs its likely benefit. Information  
within this scope of discovery need not be admissible in evidence to  
be discoverable.

15 Fed. R. Civ. P. 26(b)(1).

16 District courts have broad discretion to determine relevancy for discovery purposes. See  
17 Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002). District courts also have broad discretion  
18 to limit discovery to prevent its abuse. See Fed. R. Civ. P. 26(b)(2) (instructing that courts must  
19 limit discovery where the party seeking the discovery "has had ample opportunity to obtain the  
20 information by discovery in the action" or where the proposed discovery is "unreasonably  
21 cumulative or duplicative," "obtain[able] from some other source that is more convenient, less  
22 burdensome, or less expensive," or where it "is outside the scope permitted by Rule 26(b)(1)").

23 Parties are required to respond to interrogatories to the fullest extent possible in writing  
24 under oath. Fed. R. Civ. P. 33(b)(3). Answers and objections must be served within thirty days  
25 after being served with the interrogatories and any objections must be stated with specificity.  
26 Fed. R. Civ. P. 33(b)(2) and (b)(4). "Any ground not stated in a timely objection is waived  
27 unless the court, for good cause, excuses the failure." Fed. R. Civ. P. 33(b)(4).

28 A party may request the production of any document within the scope of Rule 26(b).

1 Fed. R. Civ. P. 34(a). The responding party is responsible for all items in the “responding party’s  
2 possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). A party who has been served must  
3 respond in writing within thirty days of being served. Fed. R. Civ. P. 34(b)(2)(A). “For each  
4 item or category, the response must either state that inspection and related activities will be  
5 permitted as requested or state with specificity the grounds for objecting to the request,  
6 including the reasons.” Fed. R. Civ. P. 34(b)(2)(B). A party who fails to file timely objections  
7 [to discovery requests] waives all objections. Browning v. Lilien, 2016 WL 4917115, at \*5 (S.D.  
8 Cal. Sept. 15, 2016) (citing Ramirez v. County of L.A., 231 F.R.D. 407, 409 (C.D. Cal 2005)  
9 (citing Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir.), cert.  
10 dismissed, 506 U.S. 948 (1992) (“[F]ailure to object to discovery requests within the time  
11 required constitutes a waiver of any objection.”)).

12 “Pro se litigants must follow the same rules of procedure that govern other litigants.”  
13 Alexis v. Rogers, 2017 WL 1967328, at \*8 (S.D. Cal. May 12, 2017) (quoting King v. Atiyeh, 814  
14 F.2d 565, 567 (9th Cir. 1987). “A party’s lack of counsel may be considered in evaluating the  
15 willfulness of discovery violations and the failure to obey court orders and in weighing the other  
16 factors regarding dismissal, but pro se status does not excuse intentional noncompliance with  
17 discovery rules and court orders.” Id. (quoting Sanchez v. Rodriguez, 298 F.R.D. 460, 470 (C.D.  
18 Cal. Mar. 18, 2014) (citing Lindstedt v. City of Granby, 238 F.3d 933, 937 (8th Cir. 2000) (holding  
19 that “[a] pro se litigant is bound by the litigation rules as is a lawyer, particularly here with the  
20 fulfilling of simple requirements of discovery”); and Gordon v. County of Alameda, 2007 WL  
21 1750207, at \*5 (N.D. Cal. June 15, 2007) (“pro se plaintiffs must abide by the rules of  
22 discovery”).

23 “If an opposing party fails to file the papers in the manner required by Civil Local Rule  
24 7.1.e.2, that failure may constitute a consent to the granting of a motion or other request for  
25 ruling by the court.” See CivLR 7.1(f)(3)(c); see also Heston v. GB Capital Holdings, LLC, 2016  
26 WL 4468254, at \*2, n.1 (S.D. Cal. Aug. 23, 2016) (noting that “[a] district court may properly  
27 grant an unopposed motion pursuant to a local rule where the local rule permits, but does not  
28 require, the granting of a motion for failure to respond.”) (citing Ghazali v. Moran, 46 F.3d 52,

1 54 (9th Cir. 1995) (affirming dismissal for failing to oppose a motion to dismiss, based on a local  
2 rule providing that “[t]he failure of the opposing party to file a memorandum of points and  
3 authorities in opposition to any motion shall constitute consent to the granting of the motion”).

#### 4 **DISCUSSION**

5 Defendants seek an order from the Court compelling Plaintiff to respond to Defendants’  
6 written discovery including Interrogatories, Set One and Requests for Production of Documents,  
7 Set One within fifteen days of the Court’s order on this motion. MTC at 9.

8 Plaintiff did not file an opposition to Defendants’ motion. See Docket.

9 Given the procedural history set forth above, the Court is confident that Plaintiff received  
10 the requests for discovery, was aware of his obligation to respond to those requests, and  
11 intentionally failed to do so. On March 22, 2018, Plaintiff participated in a conference call with  
12 Judge Major’s law clerk and defense counsel Andrea Smith, during which Plaintiff confirmed  
13 receipt of the discovery requests via email and agreed that he would get in touch with Ms. Smith  
14 in ten business days to let her know when he would have the discovery responses completed.<sup>2</sup>  
15 Plaintiff failed to do so. Additionally, Plaintiff was made aware of the instant motion as the  
16 motion was served to him via the United States Postal Service and email on April 18, 2018 [see  
17 ECF No. 30-5] and the briefing schedule ordering Plaintiff to oppose Defendants’ motion to  
18 compel by May 4, 2018 was mailed to Plaintiff by the Clerk’s Office on April 19, 2018. ECF No.  
19 31 (“All non-registered users served via U.S. Mail Service”).

20 By failing to respond or object to Defendants’ discovery requests, Plaintiff has waived all  
21 objections to the Interrogatories and Requests for Production served by Defendants. See Fed.  
22 R. Civ. P 33(b)(4) and 34; see also Browning v. Lilien, 2016 WL 4917115, at \*5 (S.D. Cal. Sept.  
23 15, 2016). Also, by failing to oppose Defendants’ motion to compel, Plaintiff has consented to  
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26 <sup>2</sup> Following the call in which Plaintiff clarified his address, Judge Major’s law clerk called the  
27 Clerk’s Office and had Plaintiff’s address as shown on the docket corrected. The Docket initially  
28 stated that Plaintiff lived on Shades Hill Drive as opposed to his correct address which is  
Shadescale Drive. See Docket; see also ECF No. 27 (mail returned as undeliverable from Shades  
Hill Drive).

1 the granting of the motion. See CivLR 7.1(f)(3)(c). Additionally, the Court notes that the instant  
2 case has been pending for more than two years and that Defendants have not received basic  
3 discovery responses from Plaintiff, despite their repeated efforts. Accordingly, Defendants'  
4 motion to compel is **GRANTED**. Plaintiff is **ORDERED** to serve responses to Defendants'  
5 Interrogatories, Set One and Requests for Production of Documents, Set One on or before **June**  
6 **4, 2018**. Plaintiff is warned that failing to comply with this Order may result in the imposition  
7 of sanctions, including the dismissal of Plaintiff's case.

8 **IT IS SO ORDERED.**

9 Dated: 5/14/2018

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11 Hon. Barbara L. Major  
12 United States Magistrate Judge  
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