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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**NORTHERN DIVISION**

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**SUMMITONE FEDERAL CREDIT  
UNION,**

**Plaintiff,**

**v.**

**CUMIS INSURANCE SOCIETY, INC.,**

**Defendant.**

**MEMORANDUM DECISION AND  
ORDER**

**Case No. 1:10cv14**

**Chief District Judge Ted Stewart**

**Magistrate Judge Paul M. Warner**

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This matter was referred to Magistrate Judge Paul M. Warner by Chief District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A).<sup>1</sup> Before the court are (1) CUMIS Insurance Society, Inc.’s (“Defendant”) affidavit and cost memorandum<sup>2</sup> requested by this court in its April 5, 2011 memorandum decision and order (“April 5 Order”)<sup>3</sup> and (2) SummitOne Federal Credit Union’s (“Plaintiff”) memorandum in opposition to that affidavit.<sup>4</sup>

In the April 5 Order, the court granted Defendant’s request for attorney fees and costs it incurred in bringing its second motion to compel. The court found that pursuant to rule

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<sup>1</sup> See docket no. 15.

<sup>2</sup> See docket no. 46.

<sup>3</sup> See docket no. 44.

<sup>4</sup> See docket no. 50.

37(a)(5)(A) of the Federal Rules of Civil Procedure, “(1) Defendant attempted in good faith to obtain the requested documents without resorting to court intervention, (2) Plaintiff’s failure to provide the requested documents was not substantially justified, and (3) there are not other circumstances that would make such an award unjust.”<sup>5</sup> *See* Fed. R. Civ. P. 37(a)(5)(A).

Defendant’s affidavit requests \$2358.50 for attorney fees and costs in filing its second motion to compel. Plaintiff opposes awarding any attorney fees and costs to Defendant because the second motion to compel was not based on a formal request for production of documents but rather an email requesting certain documents. Plaintiff further contends that if the court awards attorney fees and costs to Defendant, it should reduce the amount to \$1758.50 on the grounds that Defendant should not charge for two attorneys to prepare and revise the second motion to compel.

The court is not persuaded by either of Plaintiff’s arguments. In the court’s previous order granting Defendant’s first motion to compel, the court warned Plaintiff that it would consider awarding attorney fees and costs “in the future if Plaintiff does not make every good faith effort to comply with the discovery rules and orders of this court.”<sup>6</sup> Because Plaintiff’s inaction necessitated the filing of the second motion to compel, awarding Defendant’s attorney fees and costs is appropriate.

The court has reviewed Defendant’s affidavit and cost memorandum and has determined that the amount requested is reasonable. Based on the foregoing, **IT IS HEREBY ORDERED**

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<sup>5</sup> Docket no. 44 at 7.

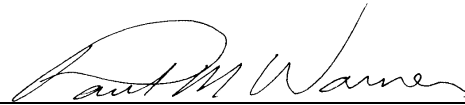
<sup>6</sup> Docket no. 24 at 2.

that on or before August 26, 2011, Plaintiff shall pay a total of \$2358.50 in attorney fees and costs to Defendant.

**IT IS SO ORDERED.**

DATED this 1st day of August, 2011.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Paul M. Warner", is written above a horizontal line.

PAUL M. WARNER  
United States Magistrate Judge