

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

BYRON W. TURNER

PLAINTIFF

v.

Case No. 2:12-CV-02114

GRAPHIC PACKAGING INTERNATIONAL, INC.

DEFENDANT

ORDER

Currently before the Court is Defendant Graphic Packaging International, Inc.'s ("Graphic Packaging") Motion to Compel and attached brief in support.¹ (Doc. 18).

The response period having passed with no response being filed by Plaintiff, the Court inquired of defense counsel as to whether the issues set forth in the motion had been resolved. Defense counsel informed the Court that the substantive issues were resolved subsequent to the filing of the motion.

Accordingly, IT IS ORDERED that Graphic Packaging's Second Motion to Compel (Doc. 18) is DENIED AS MOOT.

Subject to certain exceptions, if requested discovery is provided after a motion to compel is filed, "the court must, after giving an opportunity to be heard, require the party . . . whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). The Court has previously denied Graphic Packaging's request to assess Rule 37 sanctions against Mr. Turner in relation to a motion to compel. (Doc. 12). The denial was based on

¹ Defense counsel has, previously and in this instance, filed the supporting brief as an attachment to the motion. Defense counsel is directed that, in the future, the motion and the brief should be filed as separate documents.

the fact that Mr. Turner was proceeding *in forma pauperis* and *pro se*. Although Mr. Turner is still proceeding *in forma pauperis*, he has since retained an attorney. It is not clear to the Court whether an award of expenses against either Mr. Turner or his attorney, or both, may be appropriate at this time. Therefore, Graphic Packaging is directed to file an affidavit documenting its fees and expenses incurred in bring the instant motion by July 15, 2013. Mr. Turner will be given 7 days to file any objections.

IT IS SO ORDERED this 8th day of July, 2013.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE