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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HAROLD WALKER,

Plaintiff,

v.

FRESNO POLICE DEPARTMENT.,
et al.,

Defendants.

CASE NO.: **1:09-cv-01667-OWW-SKO**

**ORDER DENYING REQUEST FOR
APPORTIONMENT OF
REASONABLE EXPENSES FOR
DEFENDANTS' MOTION TO
COMPEL**

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I. INTRODUCTION

Plaintiff Harold Walker ("Plaintiff") is proceeding *pro se* and *in forma pauperis* in this action brought pursuant to 42 U.S.C. § 1983 against Defendant-Officers Alvarez, Aranas, Leibee, Dozier, and Corona (collectively, "Defendants"). Plaintiff filed this action on September 21, 2009.

On February 28, 2011, Defendants propounded discovery on Plaintiff including Interrogatories and Requests for Admissions ("RFAs"). Defendant Aranas also served Plaintiff with Requests for Production of Documents, Set One ("RFPs"). Responses to all the discovery requests were due on April 18, 2011. (Doc. 46-2, ¶ 3.) Plaintiff responded to the Interrogatories, but not to Defendants' RFAs or to Defendant Aranas' RFPs.

1 On May 24, 2011, Defendants filed a Motion to Compel seeking a court order requiring
2 Plaintiff to respond to the RFAs and RFPs. (Doc. 46-1.) Defendants' counsel, Michelle Sassano,
3 submitted a declaration in support of Defendants' motion stating that Defendants did not receive a
4 response to either the RFAs or the RFPs. (Doc. 46-2, ¶ 5.) On June 15, 2011, Defendants filed a
5 supplemental declaration indicating that the only outstanding discovery was the response to
6 Defendant Aranas' RFPs. (Doc. 48, 4.)

7 On June 23, 2011, the Court granted in part and denied in part Defendants' motion to compel.
8 The Court ordered that Plaintiff provide responses to Defendant Aranas' RFPs within thirty-three
9 days from the date of order. (Doc. 50.) While Defendants requested that they be awarded the
10 reasonable fees and costs associated with bringing the motion, the Court held its decision on that
11 request in abeyance until Plaintiff provided responses to the RFPs. (Doc. 50, 3:9-22.)

12 On August 5, 2011, Defendant Aranas provided a status report indicating that Plaintiff had
13 provided a written response to the RFPs as required by the Court's June 23, 2011, order.

14 For the reasons set forth below, Defendants' request for an award of reasonable fees and
15 costs associated with bringing the motion to compel is DENIED.

16 II. DISCUSSION

17 In a discovery dispute, the prevailing party is entitled to recover reasonable expenses incurred
18 in bringing a motion to compel or in opposing a motion to compel. Fed. R. Civ. P. 37(a)(5). Where
19 the motion is granted in part and denied in part, the Court may apportion reasonable expenses. Fed.
20 R. Civ. P. 37(a)(5)(C). The Court "must not order this payment" if it finds the response or objection
21 was substantially justified or circumstances make the award unjust. Fed. R. Civ. P. 37(a)(5)(A).

22 In this case, Plaintiff is proceeding *in propria persona* and *in forma pauperis*. It appears that
23 Plaintiff made attempts to serve some responses to the discovery requests prior to the filing of
24 Defendants' motion to compel, and this is the first and only failure to timely respond to discovery
25 that has been brought to the Court's attention. Additionally, this is a failure to timely respond to
26 some discovery requests, as opposed to a complete failure to respond to all discovery requests.
27 Accordingly, the Court finds an award of fees and expenses would be unjust at this time.
28

1 Plaintiff is cautioned, however, that timely responses to discovery requests are **required**, and
2 any further failure to timely participate in the discovery process, or in the litigation generally, may
3 result in the imposition of monetary sanctions or dismissal of the action.

4 **III. CONCLUSION**

5 In sum, the Court finds that the present circumstances do not merit an award of expenses.
6 However, as set forth above, any further failure by the Plaintiff to timely participate in the litigation,
7 including the discovery process, may result in the imposition of monetary sanctions or in the
8 dismissal of the action. Accordingly, Defendants' request for an award of fees and costs for bringing
9 the motion to compel is DENIED. Fed. R. Civ. P. 37(a)(5)(A)(iii).

10
11 IT IS SO ORDERED.

12 **Dated: August 12, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE