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7 **UNITED STATES DISTRICT COURT**

8 EASTERN DISTRICT OF CALIFORNIA
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10 JESSE ALFARO,

Case No. 1:12-cv-00568-LJO-BAM PC

11 Plaintiff,

ORDER REQUIRING PLAINTIFF TO PAY
REASONABLE EXPENSES INCURRED IN
THE AMOUNT OF \$340.00 AND STAYING
ORDER IN LIGHT OF PLAINTIFF'S
INDIGENCY

12 v.

13 WILLIAM J. MCGUINNESS, et al.,

14 Defendants.
15 _____/

(ECF Nos. 26, 27)

16 Plaintiff Jesse Alfaro, a former state prisoner proceeding pro se and in forma pauperis,
17 filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 12, 2012. This action for
18 damages is proceeding on Plaintiff's complaint against Defendants McGuinness, Moon, Neubarth,
19 John Doe and Jane Doe for deliberate indifference to serious medical needs in violation of the
20 Eighth Amendment of the United States Constitution.

21 On August 20, 2014, the Court granted Defendants' motion to compel discovery responses
22 and directed Defendants to file a statement of reasonable expenses incurred. Fed. R. Civ. P.
23 37(a)(5)(A). Defendants filed a statement of expenses on September 16, 2014. (ECF No. 27.)
24 Plaintiff did not file a response.

25 If a motion to compel is granted, the Court shall require the party whose conduct
26 necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's
27 reasonable expenses incurred in making the motion. Fed. R. Civ. P. 37(a)(5)(A) (quotation marks
28 omitted).

1 In this instance, Defendants' motion to compel was granted in full. The Court has
2 reviewed the attorney's fees sought by Defendants and finds that two hours of time at a rate of
3 \$170.00 is reasonable. However, the Ninth Circuit has held that it is an abuse of discretion to
4 order a sanction which cannot be performed, and Plaintiff has been granted leave to proceed in
5 forma pauperis in this action, suggesting that he is unable to pay monetary sanctions. *Thomas v.*
6 *Gerber Prod.*, 703 F.2d 353, 357 (9th Cir. 1983).

7 Therefore, the Court HEREBY ORDERS as follows:

- 8 1. Reasonable expenses in the amount of \$340.00 are assessed against Plaintiff;¹
- 9 2. The order assessing reasonable expenses in the amount of \$340.00 is stayed; and
- 10 3. At any time prior to the closure of this action, Defendants may move to lift the stay
11 and enforce the sanction upon a showing that Plaintiff has the ability to pay \$340.00.

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13 IT IS SO ORDERED.

14 Dated: November 4, 2014

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE
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¹ \$170.00/hour x 2 hours.