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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 AL PRINGLE,

10 Plaintiff,

11 v.

12 WALMART DISTRIBUTION CENTER, et  
13 al.,

14 Defendants.

Case No. 1:19-cv-00468-BAM

ORDER GRANTING DEFENDANT'S  
MOTION TO COMPEL RESPONSES TO  
WRITTEN DISCOVERY

(Doc. No. 21)

15 Currently pending before the Court is Defendant Walmart Inc.'s ("Defendant") Motion to  
16 Compel Responses to Written Discovery filed on February 19, 2020. (Doc. No. 21.) By the  
17 motion, Defendant seeks an order (1) compelling Plaintiff Al Pringle ("Plaintiff") to provide  
18 responses to Defendant's Interrogatories, Set One, and Request for Production of Documents,  
19 Set One; and (2) issuing sanctions against Plaintiff in the amount of \$7,000.00, representing the  
20 reasonable costs and attorneys' fees incurred by Defendant for the instant motion. (*Id.* at 2.)

21 Plaintiff Al Pringle failed to file a timely written opposition or any other response to the  
22 motion in violation of Local Rule 251(e). The Court therefore vacated the hearing on  
23 Defendant's motion to compel set for March 6, 2020. The motion is deemed submitted. (Doc.  
24 No. 22.)

25 Having considered the moving papers, and for the reasons stated, Defendant's motion to  
26 compel responses shall be GRANTED subject to a reduction in the amount of requested  
27 expenses.

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1           **I.     Background**

2           Plaintiff initiated this employment discrimination action on August 24, 2018, in Tulare  
3 County Superior Court. Plaintiff, a truck driver, asserted seven claims based on allegations of  
4 harassment in retaliation for Plaintiff caring for his ill father and his race and ethnicity. The  
5 matter was removed to this Court on April 10, 2019. (Doc. No. 1.)

6           The Court issued a Scheduling Order on October 1, 2019. (Doc. No. 19.) Pursuant to  
7 that order, the deadline to complete non-expert discovery is April 24, 2020. (Doc. No. 19.)

8           On October 16, 2019, Defendant served Plaintiff with written Interrogatories, Set One,  
9 and Request for Production of Documents, Set One. (Doc. No. 21-2, Declaration of Jeffrey J.  
10 Mann (“Mann Decl.”), ¶ 2.) Following the failure to receive a timely response, Defendant  
11 contacted Plaintiff’s counsel on December 1, 2019. On December 2, 2019, Plaintiff’s counsel  
12 responded, stating that he did not recall receiving the requests and asking for an electronic copy.  
13 Defendant sent the requested electronic copy to Plaintiff’s counsel the same day. *Id.* at ¶ 3.

14           On December 3, 2019, Plaintiff requested an extension of time to respond to discovery,  
15 and Defendant agreed to extend the deadline until December 13, 2019. Mann Decl. at ¶ 4.

16           On December 14, 2019, Plaintiff requested an additional extension of time to respond  
17 through the first week of January 2020. Defendant agreed to the extended deadline. Mann Decl.  
18 at ¶ 5.

19           Plaintiff failed to respond to the written discovery propounded by Defendant on October  
20 16, 2019. Mann Decl. at ¶ 6. As a result, Defendant filed the instant motion to compel on  
21 February 19, 2020. (Doc. No. 21.) Plaintiff failed to respond to the motion to compel.

22           **II.     Discussion**

23                   **A.   Motion to Compel Responses**

24           Generally, under Federal Rule of Civil Procedure 26, a party “may obtain discovery  
25 regarding any nonprivileged matter that is relevant to any party’s claim or defense and  
26 proportional to the needs of the case, considering the importance of the issues at stake in the  
27 action, the amount in controversy, the parties’ relative access to relevant information, the parties’  
28 resources, the importance of the discovery in resolving the issues, and whether the burden or

1 expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).  
2 “Information within this scope of discovery need not be admissible in evidence to be  
3 discoverable.” Id.

4 Rule 33(a) allows a party to serve on any other party written interrogatories that relate to  
5 any matter that may be inquired into under Rule 26(b). Fed. R. Civ. P. 33(a)(1), (2). A  
6 responding party must serve answers to written interrogatories within 30 days after service. Fed.  
7 R. Civ. P. 33(b)(2). Similarly, Rule 34(a) provides that a party may serve on any other party a  
8 request within the scope of Rule 26(b) to produce and permit the requesting party or its  
9 representative to inspect, copy, test, or sample any designated documents or tangible things in  
10 the responding party’s possession, custody or control. Fed. R. Civ. P. 34(a)(1)(A), (B). The  
11 party to whom the request is directed must respond in writing within 30 days after service. Fed.  
12 R. Civ. P. 34(b)(2)(A). If a party fails to answer an interrogatory submitted under Rule 33 or  
13 fails to produce documents under Rule 34, then the party seeking discovery may move for an  
14 order compelling answers or production. Fed. R. Civ. P. 37(a)(3)(B).

15 Without any apparent justification, Plaintiff failed to provide responses to written  
16 interrogatories or requests for production in a timely manner, even after obtaining extensions of  
17 time to respond. Further, Plaintiff failed to respond to the motion to compel. Accordingly, the  
18 Court finds that Defendant is entitled to written responses and production of documents, without  
19 objection, to the discovery initially propounded on October 16, 2019, and retransmitted on  
20 December 2, 2019.

### 21 **B. Request for Sanctions**

22 Defendant seeks an award of reasonable expenses and attorneys’ fees due to Plaintiff’s  
23 failure to respond and provide written discovery responses. Pursuant to Federal Rule of Civil  
24 Procedure 37(a)(5), if the motion to compel is granted, the Court must, after giving an  
25 opportunity to be heard, require the party whose conduct necessitated the motion, the party or  
26 attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in  
27 making the motion, including attorney's fees. The Court must not order this payment if: (1) the  
28 movant filed the motion before attempting in good faith to obtain the discovery without court

1 action; (2) the opposing party's nondisclosure was substantially justified; or (3) other  
2 circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5).

3 The record before the Court demonstrates that Defendant attempted to obtain responsive  
4 discovery prior to filing the instant motion and granted Plaintiff several extensions. There is no  
5 evidence that Plaintiff's failure to respond was substantially justified or that other circumstances  
6 make an award of expenses unjust. This is particularly true in the absence of any response to the  
7 motion to compel and request for expenses. The Court therefore finds that Defendant is entitled  
8 to an award of expenses.

9 Defendant seeks \$7,000.00 for the expenses incurred, identifying these costs to include  
10 \$1,499.00 in attorneys' fees to draft the motion, another estimated \$360.50 for drafting a reply,  
11 and an estimated \$5,600 for attending the hearing. Mann Decl. at ¶ 8. However, because no  
12 reply was filed and the Court deemed the hearing unnecessary, Defendant's expenses and any  
13 related award are limited to the \$1,499.00 incurred in drafting the motion.

14 **III. Conclusion and Order**

15 Based on the above, IT IS HEREBY ORDERED as follows:

- 16 1. Defendant's Motion to Compel Responses to Written Discovery, filed on February  
17 19, 2020, is GRANTED;
- 18 2. Within **fourteen (14) days** from the date of this order, Plaintiff shall provide written  
19 responses and produce documents without objection to Defendant's Interrogatories to  
20 Plaintiff, Set One, and Request for Production of Documents, Set One; and
- 21 3. Defendant is AWARDED \$1,499.00 in attorneys' fees in connection with the  
22 successful motion to compel payable within thirty (30) days from the date of this  
23 order.

24  
25 IT IS SO ORDERED.

26 Dated: March 30, 2020

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE