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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JUAN LORENZO RANKIN,

11 Plaintiff,

No. 2: 11-cv-0145 MCE JFM

12 vs.

13 SUISUN POLICE DEPARTMENT, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is proceeding pro se with his complaint. On September 21, 2012,
17 defendants filed their first motion to compel responses to defendants' set one special
18 interrogatories and set one request for production of documents. (See Dkt. No. 30.) Defendants
19 also requested their expenses associated with having to bring their first motion to compel. The
20 matter was heard on October 18, 2012. The motion to compel was granted and plaintiff was
21 ordered to submit responses to defendants' set one special interrogatories and set one request for
22 the production of documents on or before October 25, 2012. (See Dkt. No. 39.) The court
23 reserved ruling on defendants' request for expenses. (See id.)

24 On October 17, 2012, defendants filed their second motion to compel responses to
25 their set two special interrogatories and set two request for the production of documents. (See
26 Dkt. No. 32.) Defendants also requested their expenses associated with bringing their second

1 motion to compel. On October 26, 2012, plaintiff filed his responses to defendants' discovery
2 requests with the court.¹ Defendants' second motion to compel was heard on November 8, 2012.

3 At the November 8, 2012 hearing, defendants' represented to the court that
4 plaintiff's responses to defendants discovery requests answered the outstanding requests set forth
5 in their second motion to compel. Thus, defendants' second motion to compel will be denied as
6 moot. However, the court took defendants' request for expenses associated with bringing the
7 second motion to compel under advisement. Therefore, presently pending before the court are
8 defendants' requests for expenses associated with bringing their two motions to compel.

9 Federal Rule of Civil Procedure 37(d)(1) provides in relevant part:

10 (A) Motion; Grounds for Sanctions. The court where the action is
11 pending may, on motion, order sanctions if:

- 12 (i) a party or a party's officer, director, or
13 managing agent – or a person designated under
14 Rule 30(b)(6) or 31(a)(4) – fails, after being served
15 with proper notice, to appear for that person's
16 deposition; or
17 (ii) a party, after being properly served with
18 interrogatories under Rule 33 or a request for
19 inspection under Rule 34, fails to serve its answers,
20 objections, or written response.

21 FED. R. CIV. P. 37(d)(1)(A)(i)-(ii). Such a motion “must include a certification that the movant
22 has in good faith conferred or attempted to confer with the party failing to act in an effort to
23 obtain the answer or response without court action.” FED. R. CIV. P. 37(d)(1)(B). Pursuant to
24 Federal Rule of Civil Procedure 37(d)(3), the sanctions that may be imposed are those listed in
25 Federal Rule of Civil Procedure 37(b)(2)(A)(i)-(vi).²

26 ¹ At the October 18, 2012 hearing, plaintiff was ordered to file his discovery responses
with the court as well as serve them on defendants.

² The sanctions listed in that part of the rule include:

- (i) directing that the matters embraced in the order or other
designated facts be taken as established for purposes of the action,

1 In this case, plaintiff is proceeding pro se and in forma pauperis. Plaintiff's
2 discovery responses resolved defendants' second motion to compel that was filed on October 17,
3 2012 thereby mooted that motion. Under these circumstances, while the court is sympathetic to
4 the expenses incurred by defendants in bringing their motions to compel, the court finds that
5 awarding expenses against plaintiff at this time is unjust. However, plaintiff is warned that any
6 further failure to comply with the Federal Rules of Civil Procedure and/or the Local Rules may
7 result in the award of expenses and/or sanctions to defendants.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Defendants' motion to compel (Dkt. No. 32.) is DENIED; and
10 2. Defendants' requests for sanctions/expenses (See Dkt. Nos. 30 & 32.)
11 associated with bringing their two motions to compel are DENIED.

12 DATED: January 7, 2013.

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14 
15 UNITED STATES MAGISTRATE JUDGE

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22 as the prevailing party claims;
23 (ii) prohibiting the disobedient party from supporting or opposing
24 designated claims or defenses, or from introducing designated
25 matters in evidence;
26 (iii) striking pleadings in whole or in part;
(iv) staying further proceedings until the order is obeyed;
(v) dismissing the action or proceeding in whole or in part; [or]
(vi) rendering a default judgment against the disobedient party.

FED. R. CIV. P. 37(b)(2)(A)(i)-(vi).