

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 08-cv-00433-CMA-KMT

ALAN RAMON,

Plaintiff,

v.

CITY AND COUNTY OF DENVER,
DENVER POLICE DEPARTMENT,
ERIC DENKE, individually,
KARL ROLLER, individually,
AARON KAFER, individually,
JOHN SPEEZE, individually, and
MICHAEL ANICH, individually,

Defendants.

ORDER

This matter is before the court on “Defendants’ Motion to Compel and Request for Expenses and Fees” (“Motion”) [Doc. No. 80].

On February 25, the court conducted a hearing on the issues presented by this Motion. The plaintiff was represented by counsel, Leonard A. Martinez, although Mr. Martinez had filed a Motion to Withdraw as counsel for the plaintiff. [Doc. No. 87.] This court granted the defendants’ Motion to Compel and the plaintiff was allowed until March 7, 2010 to fully respond

to the outstanding discovery requests previously forwarded by Defendants. [Minutes, Doc. No. 88]. A ruling on the request for an award of costs and fees was held in abeyance.

On March 5, 2010, the plaintiff through his counsel filed “Plaintiff’s Response to Show Cause Order” (“Resp.”) [Doc. No. 92] stating that the plaintiff had been in contact with his attorney and that plaintiff intended to respond to the outstanding interrogatories. Further, Plaintiff represented that since his incarceration at Bent County Correctional Facility he had experienced difficulties with mail delivery. (*Id.* ¶ 4.) Although not captioned or docketed as a motion, plaintiff’s counsel stated, “Plaintiff is requesting additional time to respond to interrogatories and production of documents.” (*Id.* ¶ 6.) Although counsel professed a belief that the plaintiff would be compliant with his discovery obligations, counsel did not withdraw his pending request to withdraw as counsel for plaintiff and, on March 8, 2010, the District Court granted the Motion. [Doc. No. 94.] Plaintiff now appears before the court *pro se*.

The court finds pursuant to Fed. R. Civ. P. 37(a)(5) that although the Motion was granted to compel discovery, given the problems the plaintiff has had with his mail, his counsel’s inability to establish contact with the plaintiff after his incarceration and plaintiff’s recent requirement to proceed *pro se* in the case, “circumstances make an award of expenses unjust.”

Therefore, it is

ORDERED:

1. “Defendants’ Motion to Compel and Request for Expenses and Fees” is **DENIED** as to the request for expenses and fees. This motion is now fully resolved.

It is further **ORDERED**

2. The Clerk is directed to correct the docket to reflect that “Plaintiff’s Response to Show Cause Order” [Doc. No. 92] is a pending Motion for Extension of Time. The defendants shall respond to this request for extension of time on or before **March 26, 2010**.

3. Plaintiff shall respond to the Defendants’ “Motion to Dismiss as Sanction for Failure to Prosecute Pursuant to Fed.R.Civ.P. 41(b)” [Doc. No. 95] on or before **March 29, 2010**.

Dated this 9th day of March, 2010.

BY THE COURT:



Kathleen M. Tafoya
United States Magistrate Judge