

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION

MICHAEL R. KELLER,

Plaintiff,

v.

CASE NO. 1:11-cv-77-MP-GRJ

RUSSELL HINOTE and  
C. HOLMES,

Defendants.

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**ORDER**

This matter is before the Court on the Motion To Compel of Defendant Russell Hinote. (Doc. 24.) Defendant represents that Plaintiff has not served objections or responded to Defendant's interrogatories and request for production served on February 13, 2012. Due to the limited amount of time until the discovery deadline the Court determines that the motion is due to be granted before the time for a response to the motion is due.

Defendant also requests an award of attorney's fees and costs incurred in bringing its motion to compel. Rule 37(a)(5) provides "if the disclosure or requested discovery is provided after the motion was filed – the court must ... require the party ... whose conduct necessitated the motion ... to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." As written the Rule mandates that the Court award fees where the responses to the discovery requests are provided after the filing of the motion. The Rule provides an exception to the requirement that the Court "must" award of attorney's fees in situations where the court finds that the "opposing party's nondisclosure ... was substantially justified" or finds "other circumstances make an award of expenses unjust." Id. However, before the Court

determines whether attorney's fees should be awarded the Plaintiff will be provided with an opportunity to file a response to Defendant's request for fees. After the Court receives Plaintiff's response to Defendant's request for fees the Court will enter a further order addressing the issue of fees.

Accordingly, upon due consideration, it is **ORDERED**:

- (1) The Motion To Compel of Defendant Russell Hinote. (Doc. 24) is **GRANTED**. Plaintiff shall provide full and complete responses to Defendant's Interrogatories and Request for Production on or before **April 30, 2012**.
- (2) Plaintiff shall file a response to Defendant's request for attorney's fees on or before **April 30, 2012**.

**DONE AND ORDERED** this 16<sup>th</sup> day of April 2012.

*s/ Gary R. Jones*

GARY R. JONES  
United States Magistrate Judge