

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHEN M. WARREN,
Plaintiff,

CIVIL ACTION NO. 09-CV-13931

VS.

DISTRICT JUDGE LAWRENCE P. ZATKOFF

HIGHWAY TRANSPORT,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

**OPINION AND ORDER GRANTING DEFENDANT'S MOTION TO COMPEL
RESPONSES TO ITS FIRST SET OF INTERROGATORIES AND FIRST REQUESTS
FOR PRODUCTION OF DOCUMENTS (DOCKET NO. 12)**

This matter comes before the Court on Defendant's Motion to Compel Responses To Its First Set Of Interrogatories And First Requests For Production Of Documents filed on April 9, 2010. (Docket no. 12). Despite the Court's Order, Plaintiff, appearing in pro per, filed no response to Defendant's Motion¹. (Docket no. 14). This Motion was referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 13). The Court disposes with oral argument on this Motion. (Docket no. 14). E.D. Mich. LR 7.1(f).

Plaintiff filed this Complaint on October 6, 2009, following his termination by Defendant employer, and alleges employment discrimination in violation of Title VII of the Civil Rights Act of 1964 and a violation of the Americans With Disabilities Act. (Docket no. 1).

¹A party "opposing a Motion must filed a response, including a brief and supporting documents then available" pursuant to E.D. Mich. LR 7.1(c). Because Plaintiff has failed to file a timely Response, the Court does not await the Joint Statement of Resolved and Unresolved Issues due on May 28, 2010 pursuant to the Court's Order. (Docket no. 14).

Defendant served its First Set of Interrogatories To Plaintiff and First Requests For Production Of Documents on January 27, 2010. (Docket no. 12-3). Plaintiff's answers, responses and objections were due within thirty days of service². Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A). Plaintiff did not answer, object or otherwise respond to Defendant's discovery requests. (Docket no. 12). Defendant attempted to seek Plaintiff's concurrence in this motion and was not able to obtain it. (Docket no. 12).

Fed. R. Civ. P. 26(b) allows for discovery of information that is relevant and not privileged. Under Fed. R. Civ. P. 37(a)(3)(B), the Court can compel discovery if a party fails to answer an interrogatory submitted under Rule 33 or fails to properly respond to a request submitted under Rule 34. Defendant served twenty-one Interrogatories and sixteen Requests for Production of Documents on Plaintiff. Fed. R. Civ. P. 33(a)(1).

Plaintiff failed to respond or object to the Requests for Production and Interrogatories, and Plaintiff does not allege that the Requests for Production or Interrogatories seek privileged information. Plaintiff filed no Response to Defendant's Motion to Compel. The Court will order Plaintiff to produce documents responsive to Defendant's First Requests for Production of Documents and answer the Interrogatories as set forth below.

Defendant also requests an award of the attorney fees which it incurred to bring this motion pursuant to Fed. R. Civ. P. 37.

If the motion is granted— or if the disclosure or requested discovery is provided after the motion was filed— the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this

² Add an additional three days for service by mail. Fed. R. Civ. P. 6(d).

payment if: (iii) other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(A).

The Court will deny without prejudice Defendant's Motion as to the request for reasonable expenses including attorneys fees incurred in bringing the Motion. Fed. R. Civ. P. 37(a)(5)(A)(iii).

IT IS THEREFORE ORDERED that Defendant's Motion to Compel Responses To Its First Set Of Interrogatories And First Requests For Production Of Documents (docket no. 12) is **GRANTED** and on or before June 11, 2010 Plaintiff will produce documents responsive to Defendant's First Requests for Production of Documents and serve full and complete answers to Defendant's First Set of Interrogatories.

IT IS FURTHER ORDERED that Defendant's request for attorneys fees and costs associated with bringing the Motion is **DENIED without prejudice**.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN SANCTIONS PURSUANT TO FED. R. CIV. P. 37(b)(2)(A).

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: May 21, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this order was served upon Counsel of Record on this date.

Dated: May 21, 2010

s/ Lisa C. Bartlett _____
Case Manager

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Stephen M. Warren and Counsel of Record on this date.

Dated: May __, 2010

Courtroom Deputy