

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS SCHOENHERR,

Plaintiff,

vs.

Case No.12-cv-14276
HON. GERSHWIN A. DRAIN

PAUL SMITH
Clay Township Officer, *et al.*

Defendants.

_____ /

ORDER GRANTING DEFENDANTS' MOTION TO COMPEL PLAINTIFF'S
RESPONSES TO INTERROGATORIES, TO COMPEL PLAINTIFF'S RESPONSES TO
REQUESTS FOR PRODUCTION OF DOCUMENTS, AND TO COMPEL PLAINTIFF'S
SIGNATURE ON ALL NECESSARY MEDICAL AUTHORIZATION FORMS AND
SETTING HEARING FOR ATTORNEY FEES PURSUANT TO FED. R. CIV. P. 37

I. INTRODUCTION

On September 26, 2012, Plaintiff filed the instant § 1983 claim alleging violations of: Fourth Amendment -Illegal search and seizure (Count I), Assault and Battery (Count II), and Trespassing (Count III). On or about June 17, 2011, Plaintiff called the police to make a complaint on account of smoke entering his home because of a neighbor's bonfire. When police arrived, they asked Plaintiff if they could enter his home, and Plaintiff declined. The police then went to the neighbor's home to investigate the complaint. Shortly thereafter, the police allegedly returned to Plaintiff's home and pushed their way into the premises to

detain him.

The police allegedly forced Plaintiff to the ground, face-first, and handcuffed him. Plaintiff complained numerous times that he had a heart condition and that the handcuffs were too tight. Police called an ambulance after Plaintiff complained of chest pains and that he was having trouble breathing. Plaintiff contends that once he was taken away in an ambulance, when he returned home, the officers appeared to have conducted an illegal search of his home.

Plaintiff maintains he has suffered severe and permanent injuries to his shoulders and collarbone, shock, emotional damage, and economic harm, as a result of the police officers' actions.

Presently before the Court are various pretrial motions by Defendants. The time period for briefing has passed, and Plaintiff has failed to file a response. For the reasons that follow Defendants' Motion is **GRANTED**.

II. BACKGROUND

On February 11, 2013, Defendants served Plaintiff with their First Set of Interrogatories, which were due on or before March 13, 2013. See Mot., Dkt. No. 28, Ex.1. On February 26, 2013, Defendants served Plaintiff with their First Request for Production of Documents, which were due on or before March 28, 2013. Defendants have made multiple written and in-person requests for the outstanding discovery to no avail. See Mot., Dkt. No. 28, Ex. 4; Reply, Dkt. No. 24, pg. 5, n.4; see *also* Mot., Dkt. No. 28, pg. 2-3.

Defendants have also subpoenaed medical records from St. John River District Hospital, Tri- County EMS, and Henry Ford Macomb Hospital, all of which require Medical

Authorization Forms (“MAFs”) and a Letter Requesting Authorization (“LRA”) that must be signed by Plaintiff. Defendants sent two authorization forms to Plaintiff on February 18, 2013, and one on February 20, 2013, and Plaintiff has yet to provide the necessary signatures.

The Court issued a scheduling order on this matter on January 28, 2013, and discovery was due by June 27, 2013. Per request of the parties, the Court has extended the scheduling order dates by ninety days extending the discovery cutoff date to September 27, 2013.

III. LAW & ANALYSIS

Fed. R. Civ. P. 37(a)(1) provides in relevant part that “a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.”

Here, Defendants have shown good-faith attempts to obtain the outstanding discovery requests and Medical Authorization Forms from Plaintiff. Defendants have made multiple written and in-person attempts to get the outstanding discovery and medical authorizations and Plaintiff still has not complied. Even after Defendants mentioned Plaintiff’s dilatory behavior regarding current outstanding discovery requests herein, Plaintiff was not inclined to comply.

Accordingly, the Court hereby,

ORDERS Plaintiff to respond to Defendants’ Interrogatories within seven (7) days of the date of this order.

IT IS FURTHER ORDERED that Plaintiff respond to Defendants' Requests for Production within seven (7) days of the date of this order.

IT IS FURTHER ORDERED that Plaintiff sign the Medical Authorization release forms for St. John River District, Tri-County EMS, and Henry Ford Macomb County within seven (7) days of the date of this order.

IT IS FURTHER ORDERED that pursuant to Fed. R. Civ. P. 37 (a)(5)(A) the Court will hold oral argument on Defendants' request for reasonable attorney fees incurred as a result of having to bring the present motion on July 22, 2013. The parties shall submit briefs and documentary support for their respective positions no later than July 17, 2013.

SO ORDERED.

Dated: July 9, 2013

S/Gershwin A. Drain

GERSHWIN A. DRAIN

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
July 9, 2013, by electronic and/or ordinary mail.

S/Tanya Bankston

Deputy Clerk