

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11 CV 279

STEPHEN GAINEY,)
)
 Plaintiff)
)
 V)
)
 ALLIANCE ONE,)
)
 Defendant.)

ORDER

THIS MATTER is before the Court pursuant to a Notice of Plaintiff’s Failure to Comply with Order Compelling Discovery (#15) filed by defendant. In the document, defendant requests the Court grant Plaintiff the relief sought in its Motion to Compel, including but not limited to its reasonable expenses, including attorney fees. Alliance further requests that the Court grant such other and further relief as this Court deems necessary and appropriate, including dismissal of this action for the plaintiff’s failure to prosecute. Should defendant desire such relief, filing a document such as filed by defendant’s counsel in this matter is not the method approved by the Federal Rules of Civil Procedure for seeking such relief. Defendant’s counsel should examine Rule 37 of the Federal Rules of Civil Procedure and defendant desires relief under that Rule, then defendant’s counsel should file the appropriate pleadings.

Due to the fact that plaintiff is no longer represented by counsel, the undersigned will take this opportunity to advise plaintiff again that plaintiff has been directed by Order of this Court to respond to defendant’s interrogatories and to produce all responsive documents to defendant’s request for production of documents.

As stated previously, failure to comply with the Court's Order could result in this Court recommending to the District Court that the District Court dismiss this action for failure to prosecute and could also result in attorney fees and other expenses being taxed to the plaintiff, if defendant files a motion for such relief under Rule 37. If the plaintiff does not desire to prosecute this matter, then plaintiff should contact counsel for defendant and determine whether or not a stipulation of dismissal can be entered without any taxing of attorney fees or expenses.

ORDER

IT IS, THEREFORE, ORDERED that the Notice of Plaintiff's Failure to Comply with Order Compelling Discovery (#15) and any relief requested therein is hereby **DENIED** without prejudice. It is further **ORDERED** that a copy of this Order be mailed to the pro se plaintiff by United States mail.

Signed: August 31, 2012



Dennis L. Howell
United States Magistrate Judge

