

FILED

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

AUG 21 2013  
CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY CLERK

JAMES LUTCHER NEGLEY,  
Plaintiff,

v.

FEDERAL BUREAU OF INVESTIGATION,  
Defendant.

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Cause No. 5:12-CA-00362-OLG

**ORDER ON MOTION FOR ATTORNEY FEES**

On August 14, 2013, Defendant filed an Application for Attorney Fees (docket no. 53) related to fees incurred in seeking the Protective Order (docket no. 31) that was granted in favor of Defendant on February 14, 2013.

Defendant seeks expenses pursuant to Rule 37(a)(5) which provides that:

If the motion [for protective order] 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 the 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 payment if: (1) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party’s nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.

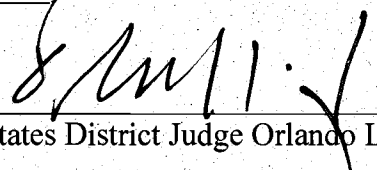
FED. R. CIV. P. 37(a)(5). Counter to Defendant’s request, the Court finds that, in relation to the Protective Order, the Plaintiff’s responses were “substantially justified” in that it was not so clear that discovery in this case should not be permitted that Plaintiff should be sanctioned for making his arguments to the Court. Additionally, the Court finds that, despite Defendant prevailing on summary judgment in this case, awarding expenses in this case would be unjust due to the fact

that Plaintiff was provided documents in this FOIA case that were not provided in previous cases giving him some basis for a belief that additional documents existed, and, therefore (even if ultimately unfounded) a reasonable basis for seeking discovery. Because of these findings, Rule 37(a)(5) does not permit this Court to award attorney's fees related to prosecution of the discovery dispute. *See id.*

Accordingly, Defendant's Motion for Attorney Fees (docket no. 53) is DENIED.

IT IS SO ORDERED.

SIGNED this 21 day of Aug., 2013.

  
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United States District Judge Orlando L. Garcia