IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TITUS HENDERSON,

ORDER

Plaintiff,

03-C-729-C

v.

DAVID BELFUEL, in his individual and official capacity, JEFFREY ENDICOTT, in his individual and official capacity, SUZANNE DEHAAN, in her individual and official capacity, SCOTT ECKSTEIN, in his individual capacity, JANELLE PASKE, in her individual capacity, DAVID TARR, in his individual capacity, SANDRA HAUTUMAKI, in her individual capacity, CINDY O'DONNELL, in her official capacity, HERB DEHN, PAUL RUHLAND and JUDY CHOJNASKI,

Defendants.

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Plaintiff Titus Henderson has filed a "Motion to File a Supplemental Complaint Purs to F.R.C.P. 15(a)" and a "Supplemental Complaint" dated August 26, 2004. In addition, plaintiff has filed a letter dated August 23, 2004, in which he appears to argue that this court erred in its August 18, 2004 order when it construed his August 3, 2004 letter as a motion for reconsideration of the magistrate judge's July 26, 2004 order pursuant to 28 U.S.C. §

636(b)(1)(A). Also in the letter, plaintiff notes that this court erred in the order portion of the August 18 order by describing the magistrate judge's order as an "order denying [plaintiff's] motion to compel."

I cannot consider plaintiff's motion for permission to file a supplemental complaint because he has not served it on defense counsel. Instead, plaintiff asks that this court make copies of his submission and forward them to defendants' lawyers. That request will be denied. Plaintiff is responsible for paying the costs of prosecuting his lawsuit, including copying costs and postage. Congress has not appropriated money to the courts to cover these expenses for indigent litigants. Therefore, until plaintiff advises the court that he has served his motion and proposed supplemental complaint on the lawyers for the defendants, the documents will be placed in the court's file but they will not be considered.

Turning to plaintiff's letter of August 23, 2004, plaintiff is correct that he did not designate his August 3, 2004 letter as a motion for reconsideration of the magistrate judge's order pursuant to 28 U.S.C. § 636(b)(1)(A). Nevertheless, it was not erroneous for this court to construe the letter to contain such a motion. In his letter, plaintiff clearly took issue with the magistrate judge's July 26 order. He states, "It is arbitrary and capricious that Magistrate Judge Crocker to refuse to grant Motion when Atty. Rick J. Mundt has acknowledge and admitted by letter that he has not followed court order/Fed. R. Civ. P. without courts intervention." He states as well, "Plaintiff will be denied the right to discover

relevant material to prove claims if Judge Crocker does not comply with Fed. R. Civ. P. and grant motion in light of evidence."

28 U.S.C. § 636(b)(1)(A) provides:

> a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court . . . . A *judge* of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law." (Emphasis added.)

Because plaintiff was challenging a pretrial decision of the magistrate judge, it was proper to construe the challenge as a motion for reconsideration under § 636(b)(1)(A).

Plaintiff also is correct that the order portion of this court's August 18 order mistakenly describes the magistrate judge's July 26 order as an order "denying plaintiff's motion to compel." Earlier in the August 18 order, I noted that the magistrate judge's July 26, 2004 order 1) granted defendants' motion for an extension of time in which to respond to plaintiff's June 23, 2004 interrogatories and request for production of documents, and 2) stated the magistrate judge's refusal to consider plaintiff's July 14, 2004, motion to compel on the ground that plaintiff did not show that he had served it on the defendants. I then went on to find that it was error for the magistrate judge to refrain from considering plaintiff's motion to compel on the ground that he had not served it on the defendants, given evidence in the record that plaintiff's motion to compel had been served on the defendants. Nevertheless, I concluded that even if the magistrate judge had considered plaintiff's motion

to compel, he would have denied it on the ground that plaintiff failed to show that he served his *June 3 and June 4* interrogatories and request for production of documents on the defendants. Plaintiff does not suggest that this holding is inaccurate.

ORDER

IT IS ORDERED that

1) This court's order of August 18, 2004 is AMENDED at page 4 to delete the first sentence of the "Order" and replace it with the following sentence:

> IT IS ORDERED that plaintiff's motion pursuant to 28 U.S.C. § 636(b)(1)(A) for reconsideration of the magistrate judge's July 26 order is GRANTED.

2) In all other respects, the August 18, 2004 order remains as entered.

3) No consideration will be given plaintiff's motion to supplement his complaint and proposed supplemental complaint until plaintiff notifies the court that he has served these

documents on defense counsel.

Entered this 1st day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge