

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RAYMOND BRESETTE, #217468,

Plaintiff,

v.

OFFICER STEVE KNUDSEN,  
SHERIFF ROBERT FOLLIS and  
LARRY WEBER,

Defendants.  
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ORDER #1

06-C-280-C

Plaintiff Raymond Bresette has asked for the third time that default be entered against the defendants for their failure to respond properly to his discovery requests. I denied the first request in an order dated October 26, 2006 and explained clearly to plaintiff that the entry of default pursuant to Fed. R. Civ. P. 55 is appropriate only when a defendant has failed to plead or defend an action. Defendants have answered plaintiff's complaint and moved for summary judgment. They are defending against this action and entry of default is inappropriate. In the October 26 order, I explained to plaintiff that if he is unhappy with defendants' responses to his discovery requests, he is free to file a motion to compel discovery pursuant to Fed. R. Civ. P. 37.

Despite this court's attempt to educate plaintiff on proper federal court procedure, plaintiff filed a second motion for entry of default on December 19, 2006 (Dkt. #45). In the motion, plaintiff complained again about defendants' failure to respond fully to his discovery requests. Rather than enter a second order denying the motion as inappropriate, I asked the clerk to docket the motion as a motion to compel discovery. Perhaps this was an ill-advised move on the court's part. The record shows that defendants have not treated the motion as a motion to compel discovery pursuant to Fed. R. Civ. P. 37. If they had, they would have responded to it within the 5-day period required by this court's pretrial procedures as described in the magistrate judge's preliminary pretrial conference order dated August 15, 2006. Therefore, in this order, I am making it explicit that plaintiff's "Motion for Entry of Default" dated November 2, 2006, is construed as a motion to compel discovery and that defendants have five days to respond to it before the magistrate judge will take it under advisement.

With respect to plaintiff's third "Motion for default judgment" (Dkt. #48), this is simply a repeat of plaintiff's complaints in Dkt. #45, although plaintiff has added a demand for \$100,000 in sanctions and "the entire costs of filing this action." If defendants fail to respond to Dkt. #45, and the magistrate judge finds that defendants' discovery tactics are so egregious as to deserve monetary sanctions, he can take that matter up when he decides the motion to compel.

ORDER

For the reasons stated in this court's order of October 26, 2006, plaintiff's "Motion for Default Judgment" (Dkt. #48) is DENIED.

Further, IT IS ORDERED that plaintiff's "Motion for Entry of Default" (Dkt. #45) is construed as a motion to compel discovery, to which defendants have five days to respond.

Entered this 4th day of January, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge