

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

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JEREMY WICKE,

Plaintiff,

v.

L&C INSULATIONS, INC.,

Defendant.

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ORDER

12-cv-638-wmc

Before the court is plaintiff Jeremy Wicke's motion for permission to withdraw his opposition brief to defendant's motion to dismiss his first amended complaint and refile an opposition brief. (Dkt. #53.) While defendant does not oppose the motion, and this court will grant it, the motion underscores existing confusion regarding defendant's serial motions to dismiss, and the briefs filed in support and opposition of those motions. Accordingly, the court will also enter an order clarifying the operative pleadings and establishing a new round of briefing to address the issues still in dispute.

Without recounting the full history of the motions to dismiss in this case, defendant's motion to dismiss the original complaint (dkt. #13) was mooted by plaintiff's filing of an amended complaint. As such, the court will deny as moot that motion. That leaves us with the motion to dismiss plaintiff's first amended complaint. (Dkt. #29.) The brief in support of that motion purports to cross-reference and incorporate other arguments made in other briefs, including new arguments (and purported evidence) submitted for the first time in defendant's reply brief to its original motion to dismiss. In opposition to this second motion to dismiss, it appears plaintiff, not surprisingly, failed to appreciate all of the arguments asserted, and now seeks leave to refile its opposition. The court will grant that relief and more.

All briefs on the multiple iterations of defendant's motion to dismiss to date are struck. Defendant is ordered to file an amended brief in support of its second motion to dismiss containing all of its arguments, rather than cross-referencing any previous briefs. The court urges defendant to consider which arguments are appropriate in a motion to dismiss, rather than in some other filing (e.g., opposition to class certification or motion for summary judgment). Regardless, the court will *only* consider arguments actually made in the new round of briefing. The briefing schedule is set forth below.

#### ORDER

IT IS ORDERED that:

- 1) Defendant's motion to dismiss (dkt. #13) is DENIED AS MOOT.
- 2) All briefs filed to date on the multiple motions to dismiss are STRUCK.
- 3) Defendant's brief in support of its motion to dismiss plaintiff's first amended complaint is due on or before March 8, 2013. Plaintiff's opposition brief is due on or before March 18, 2013. A reply, if any, is due on or before March 25, 2013.

Entered this 28th day of February, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge