

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

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NATHANIEL ALLEN LINDELL,

Plaintiff,

v.

CINDY O'DONNELL, SANDRA HAUTAMAKI,  
JOHN RAY, STEVEN CASPERSON, JEFF HAEN,  
STEVEN SPANBAUER, KATHLEEN BELLAIRE,  
CAPT. KURT LINJER, C.O. DEEVER, ELLEN RAY,  
CAPT. GILBERG, PETER HUIBREGTSE, GERALD  
BERGE, SGT. S. GRONDIN, BRIAN KOOL,  
C.O. D. ESSER, C.O. A. JONES, GARY BOUGHTON,  
JOHN SHARPE, KELLY TRUMM, C.O. JOHNSON,  
TIMOTHY HAINES, LT. J. GRONDIN, C.O. BELL,  
SGT. BARTELS, LT. BRUDAS, SGT. MURRAY,  
CPT. JULIE BIGGAR, C.O. SCHNEIDER, and  
C.O. KORTMANN,

Defendants.  
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ORDER

05-C-04-C

In July 2004, plaintiff filed this civil action in the Eastern District of Wisconsin. On November 2, 2004, the Hon. J.P. Stadtmueller granted plaintiff leave to proceed in forma pauperis on all of the claims raised in plaintiff's complaint and directed the Marshal to serve the complaint on the defendants. Subsequently, on December 30, 2004, Judge Stadtmueller

granted defendants' motion to transfer the case to this court. On that same day, all of the defendants except defendants Kurt Linjer and Capt. Julie Biggar answered the complaint. Presently before the court is plaintiff's "Notice and Motion to Find Defendants and their Counsel in Contempt and Compel them to Disclose Defendants' Julie Biggar and Kurt Linjer's Residence and Accept Service" and his "Notice and Motion Pursuant to Fed. R. Civ. P. 38(b) for Jury Trial," which plaintiff certifies he mailed to the court on January 2, 2005. Plaintiff's motion to find defendants . . . in contempt will be denied as legally meritless. As for plaintiff's motion for a jury trial, I will construe the motion as a timely filed demand for a jury trial, for which no court order is necessary.

In his motion to find defendants in contempt, plaintiff objects to the answering defendants' assertions in their answer that defendants Linjer and Biggar were not required to respond to the allegations in the complaint against them because they had not yet been served with the complaint. Plaintiff suggests that I should find defendants to be in contempt because in his view, either the Attorney General did not supply the Marshal with forwarding addresses for Linjer and Biggar or the Marshal failed to make a reasonable effort to locate these defendants. Plaintiff cites no law supporting his position that a contempt ruling is appropriate under these circumstances and I am aware of none. In any event, the record in this case reflects that defendant Biggar was served with plaintiff's complaint on January 28, 2005. Although the record is still devoid of a showing when defendant Linjer was served,

both Linjer and Biggar answered plaintiff's complaint in a responsive pleading filed on February 2, 2005. Accordingly, plaintiff's motion to find defendants in contempt will be denied.

With respect to plaintiff's motion for a jury trial, I note that Fed. R. Civ. P. 38 allows any party to demand a trial by jury "at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. . . ." Plaintiff's "motion" was filed within the time allowed under Fed. R. Civ. P. 38(b). Therefore, I construe plaintiff's motion as a demand for trial by jury pursuant to Fed. R. Civ. P. 38(b) and will request the clerk of court to make note of the demand on the court's docket, if she has not already done so.

#### ORDER

IT IS ORDERED that plaintiff's "Notice and Motion to Find Defendants and their Counsel in Contempt and Compel them to Disclose Defendants' Julie Biggar and Kurt Linjer's Residence and Accept Service" is DENIED.

Further, IT IS ORDERED that plaintiff's "Notice and Motion Pursuant to Fed. R. Civ. P. 38(b) for Jury Trial" is construed as a timely filed demand for trial by jury pursuant to Fed. R. Civ. P. 38(b). The clerk of court is requested to make note of the demand on the

court's docket.

Entered this 23rd day of February, 2005.

BY THE COURT:

BARBARA B. CRABB  
District Judge