

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

JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

06-C-205-C

THOMAS E. KARLEN, RANDALL R. HEPP,
CYNTHIA L. O'DONNELL, RICHARD
RAEMISCH, DANIELLE LACOST, MATTHEW
FRANK, PERRY NICHOLS, APRIL OLIVERSON,
K. BAUER, MICHELLE MCCAUGHTRY, JEFFREY
SCHEFELKER, TRAVIS BERRY, JUDY IMBERG
and OFFICER M. NELSON,

Defendants.

So far in this lawsuit, defendants have produced 847 documents for plaintiff's review in response to 78 interrogatories, 101 requests for admission and 81 separate document requests. In an order dated January 22, 2007, magistrate judge Stephen Crocker denied plaintiff's most recent motion to compel defendants to produce additional documents that were either not in their possession or would be difficult to produce. In addition, Judge Crocker granted defendants' motion to prohibit plaintiff's continued filing of discovery requests.

Now before the court is plaintiff's motions for reconsideration pursuant to 28 U.S.C. § 636(b)(1)(A) of the magistrate judge's order. In his motion, plaintiff contends that the magistrate erred in ruling that defendants did not need to produce (1) the locations of 53 inmates whom plaintiff asserts are potential witnesses in his case (defendants have produced the locations for 16 other inmates already) and (2) receipts from magazines sent to the prison and documents related to those receipts—items that defendants have stated repeatedly are not in their possession.

With respect to the receipts and related documents, defendants cannot produce what they do not possess. The magistrate judge made this clear to plaintiff in his January 22 order, and he did not err in doing so. Although plaintiff may doubt defendants' sincerity and question their receipt policy, there is nothing to produce.

Similarly, the magistrate judge did not err in ruling that defendants need not disclose to plaintiff the locations of 53 inmates whom plaintiff views as prospective witnesses. Plaintiff asserts that he needs to contact these inmates because the first 16 he contacted had moved away or had no memory of the matters he is litigating. Plaintiff does not identify which inmates would testify with respect to what claims or indicate what they might say and how that testimony might help him. He has given the court no reason to believe that the remaining 53 inmates whom he wishes to contact would be in any better position to testify on his behalf than were the 16 whose locations were disclosed to him by defendants.

Without some indication that the effort might yield results, defendants need not be put to the effort and expense of locating the inmates plaintiff wishes to contact.

A district judge may overturn a magistrate judge's discovery rulings only when they are "clearly erroneous or contrary to law," 28 U.S.C. § 636(b)(1)(A). Because the magistrate judge did not err when he denied plaintiff's motion to compel, plaintiff's motion for reconsideration will be denied.

ORDER

IT IS ORDERED that plaintiff James J. Kaufman's motion for reconsideration of the magistrate judge's January 22, 2007 order is DENIED.

Entered this 31st day of January, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge