

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

RICHARD HOEFT,

Plaintiff,

v.

DAVE SCHULTZ,

Defendant.

ORDER

11-cv-387-wmc

Plaintiff Richard Hoeft is proceeding in this case on his claim that defendant Dave Schultz violated plaintiff's Fourth Amendment rights by searching plaintiff's garage without a warrant. On June 7, 2012, defendant filed a motion to compel. *See* dkt. 15. In response to defendant's motion, plaintiff has filed an affidavit in which he states that he did not receive defendant's interrogatories and request for production of documents until the motion to compel was filed. Further in his affidavit, plaintiff states that he wishes to dismiss this case without prejudice in order to pursue a state John Doe criminal proceeding against the assistant attorney general representing defendant for misrepresenting when plaintiff received the interrogatories. In the alternative, he asks to be given 30 days from June 7 to answer the interrogatories. *See* dkt. 17.

When a plaintiff files a motion to dismiss his own case after a defendant has filed an answer, F. R. Civ. Pro. 41(a)(2) provides that the action may be dismissed "only upon order of the court and upon such terms and conditions as the court deems proper." Because defendant has been required to defend this action, I will not grant plaintiff's motion for dismissal without prejudice, because plaintiff's announced plan to seek a "John Doe" investigation in state court is an irrational and inefficient overreaction to what is happening here. If plaintiff chooses to dismiss this lawsuit at any time, then it will be with prejudice. Because of this, I will assume that

plaintiff does not wish to dismiss his case at this time, which means we will continue with discovery.

Defendant's motion to compel will be denied without prejudice at this time. Now that plaintiff avers that has received the interrogatories and request for production of documents, he will be given a chance to respond. Plaintiff may have until July 9, 2012 in which to answer the interrogatories and produce the requested documents. Defendant is free to renew his motion to compel if such time elapses and plaintiff has not responded.

ORDER

IT IS ORDERED that Defendant's motion to compel, dkt. 15, is DENIED without prejudice, and plaintiff has until July 9, 2012 to provide complete responses to defendant's discovery requests.

Entered this 25th day of June, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge