

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

TIMOTHY CONNER,	]	
Plaintiff,	]	
v.	] ] 1	2:16-cv-01650-KOB
SAMMY'S GENTLMEN'S CLUB,	j	
Aka SJB CORPORATION,	]	
Defendant.	]	

## MEMORANDUM OPINION

This case is before the court on Plaintiff's motion to stay discovery (Doc. 18) and Defendant's motion to dismiss (Doc. 15).

On June 17, 2016, Plaintiff Timothy Conner filed in Jefferson County Circuit Court a complaint against Sammy's Gentlemen's Club, raising claims of negligence, wantonness, and assault and battery. On October 7, 2016, the Defendants removed the case. (Doc. 1). In March 2017 the court issued a scheduling order requiring the parties to commence discovery in time to be completed by September 5, 2017. (Doc. 12). In July 2017 Defendant moved to compel Plaintiff to provide initial disclosures and discovery responses, (Doc. 13) and on July 20, 2017, the court ordered Plaintiff to provide those disclosures and to respond to Defendant's first interrogatories and request for production of documents by July 31, 2017. (Doc. 14). Plaintiff has done neither of those things.

On August 3, 2017, Defendant moved under Federal Rule of Civil Procedure 37(b) to dismiss the case for failure to provide discovery, contending that Plaintiff had not engaged in the discovery process or complied with this court's July 20 order. (Doc. 15). This court ordered

Plaintiff to show cause why the court should not grant the motion and dismiss the case as a sanction for failure to comply with a court order. (Doc. 16). Plaintiff's attorney responded, contending that he had been unable to reach his client, Mr. Conner, and requesting a 90-day stay of stay of discovery to find him. (Doc. 18). Defendant opposes the request for a stay. (Doc. 19).

Federal Rule of Civil Procedure 41 permits a court to dismiss an action "[i]f the plaintiff fails to prosecute or to comply with . . . a court order." Fed. R. Civ. P. 41(b). And Federal Rule of Civil Procedure 37 permits a court to "dismiss[] the action or proceeding in whole or in part" if a party "fails to obey an order to provide or permit discovery." Fed. R. Civ. P. 37(b)(2)(A)(v). Mr. Conner has both failed to prosecute this case and to comply with this court's July 20 order to provide discovery, and his failures to act have prejudiced Defendant already. Therefore, this court WILL DISMISS the case without prejudice. The court WILL DENY Plaintiff's motion to stay discovery. The court will enter a separate order consistent with this opinion.

**DONE** and **ORDERED** this August 25, 2017.

KARON OWEN BOWDRE

CHIEF UNITED STATES DISTRICT JUDGE