

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION**

ERIC PHERNETTON, )  
                        )  
Plaintiff,           )      Case No.     2:13-cv-00487  
                        )  
v.                    )  
                        )  
McDONALDS.           )  
                        )  
Defendant.           )

**OPINION AND ORDER**

This matter is before the court on the Motion to Compel [DE 55] filed by the *pro se* plaintiff, Eric Phernetton, on August 4, 2014. For the following reasons, the motion is **DENIED**. Phernetton's motion requests that the defendant turn over all of its evidence. However, Phernetton's motion fails for two reasons. First, Federal Rule of Civil Procedure 37(a)(3)(B) states:

A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

- (i) a deponent fails to answer a question asked under Rule 30 or 31;
- (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);
- (iii) a party fails to answer an interrogatory submitted under Rule 33; or
- (iv) a party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.

Under this rule a party may seek an order to compel discovery when an opposing party fails to respond to discovery requests or has provided evasive or incomplete responses. **Federal Rule of Civil Procedure 37(a)(2)-(3)**. Phernetton has not stated that he served specific discovery

requests on McDonalds that it failed to respond to. Instead, he broadly states that the defendant must turnover all of its evidence. This is an incorrect statement of McDonalds' duties. Before he may seek an order to compel, Phernetton must serve discovery on McDonalds, in the form of interrogatories, requests for admissions requests for production of documents, or notices for depositions, allow McDonald's time to respond, and then, if he has not received a response or finds the response incomplete, he may file a motion to compel explaining the requests McDonalds has failed to respond to.

Second, Rule 37(a)(1) states that “[t]he motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” Phernetton has not included the requisite certificate or stated his efforts to reach a resolution with McDonalds prior to seeking court intervention.

For both of these reasons, Phernetton’s Motion to Compel [DE 55] is **DENIED**.

ENTERED this 15<sup>th</sup> day of September, 2014

/s/ Andrew P. Rodovich  
United States Magistrate Judge