

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

CRAIG CUNNINGHAM,)
Plaintiff,)
)
v.)
)
FORESTERS FINANCIAL)
SERVICES, INC., *et al.*,)
Defendants.)

CAUSE NO. 2:17-CV-77-RL-JPK

OPINION AND ORDER

This matter is before the Court on Plaintiff’s Motion to Compel, Motion for Sanctions, and Motion for an Order of Contempt [DE 103], filed by Plaintiff Craig Cunningham, pro se, on February 19, 2019.

In the instant motion, Plaintiff asks the Court to compel non-party Braintree, Inc. to comply with a subpoena that Plaintiff purportedly served on Braintree on December 26, 2017. Plaintiff also asks the Court to hold Braintree, Inc. in contempt and to sanction Braintree, Inc. in the amount of \$10,000.00.

First, Plaintiff filed an identical motion on January 10, 2018. *See* (ECF 67). On January 31, 2018, the Court denied the motion without prejudice on the basis that Plaintiff did not provide the proof of service of the subpoena on Braintree, Inc. that is required by Federal Rule of Civil Procedure 45(g). *See* (ECF 69). The Court had reviewed the docket and was unable to locate a return of service for a subpoena issued to Braintree, Inc., either after December 26, 2017, or anywhere else on the docket. *Id.* Thus, the Court found that Plaintiff had not proved that a subpoena was served on Braintree, Inc. *Id.* The instant February 19, 2019 motion is an exact duplicate of the January 10, 2018 motion. Plaintiff has not cured the defect and still has not proved that a subpoena

was served on Braintree, Inc. Therefore, the Court denies the instant motion for failure to comply with Federal Rule of Civil Procedure 45.

Second, the motion is untimely, and the Court denies the motion on this basis as well. The discovery deadline in this case was December 31, 2018. The instant “Motion to Compel, Motion for Sanctions, and Motion for an Order of Contempt,” which addresses discovery issues, was not filed until February 19, 2019. Plaintiff filed the original motion over a year ago, in January 2018. Also, Defendant Foresters Financial Services, Inc. filed a Motion for Summary Judgment on August 1, 2018, and Defendant Gil Swets filed a Motion for Summary Judgment on November 19, 2018. The Seventh Circuit Court of Appeals has affirmed the denial of a motion to compel that was filed after the close of discovery and after summary judgment motions had been filed. *See Packman v. Chicago Tribune Co.*, 267 F.3d 628, 647 (7th Cir. 2001); *see also Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 542 (7th Cir. 2000) (upholding the denial of a motion to compel as untimely on the basis that the motion was filed two months after the close of discovery with the movants giving “no excuse for their tardiness”). Plaintiff has offered no explanation for the late filing of this motion.

Accordingly, the Court hereby **DENIES** Plaintiff’s Motion to Compel, Motion for Sanctions, and Motion for an Order of Contempt [DE 103].

SO ORDERED this 21st day of February, 2019.

s/ Joshua P. Kolar
MAGISTRATE JUDGE JOSHUA P. KOLAR
UNITED STATES DISTRICT COURT

cc: Pro se Plaintiff