

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

COREY HINDS, Pro Se  
Plaintiff,

v.

CIVIL ACTION NO.  
15-10073-LTS

JOHN L. DEAN,  
Defendant.

**MEMORANDUM AND ORDER RE:  
PLAINTIFF'S MOTION FOR FINAL JUDGMENT  
(DOCKET ENTRY # 85)**

**April 21, 2017**

**BOWLER, U.S.M.J.**

Plaintiff Corey Hinds ("plaintiff"), a pro se inmate, seeks a final judgment due to a failure of defendant John L. Dean ("defendant") to comply with an October 3, 2016 Order to respond to a request for production of documents and interrogatories on or before November 3, 2016.<sup>1</sup> (Docket Entry # 85). Defendant opposes the motion and points out, correctly, that he responded

---

<sup>1</sup> "Motions for sanctions premised on alleged discovery violations are not specifically excepted under 28 U.S.C. § 636(b)(1)(A) and, in general, they are not of the same genre as the enumerated motions." Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 6 (1st Cir. 1999). The Phinney court nonetheless "caution[s] that a departure from this general rule may be necessary in those instances in which a magistrate judge aspires to impose a sanction that fully disposes of a claim or defense." Id. (only citing cases that actually imposed such a sanction). This court does not aspire to enter a final judgment because, as explained below, the conduct does not warrant such a sanction. Because this court is not awarding a sanction that is dispositive, the motion is treated as any other pretrial discovery motion under section 636(b)(1)(A).

to the discovery a short time after the November 3, 2016 deadline. (Docket Entry # 87).

#### BACKGROUND

In July 2016, a few days after the discovery deadline in effect at the time, plaintiff filed a motion requesting that defendant provide him with documents responsive to three requests for production included in the motion. (Docket Entry # 73). Plaintiff thus served defendant with the document requests at the time he served defendant with the motion. (Docket Entry # 73). Plaintiff also filed a set of interrogatories but did not request that this court compel defendant to answer the interrogatories. (Docket Entry ## 70, 70-2). The certificate of service indicates that plaintiff served defendant with the interrogatories by mail on July 5, 2016. (Docket Entry ## 70, 70-2). On October 3, 2016, this court extended the June 30, 2016 discovery deadline to November 7, 2016 and, in ruling on the above motion (Docket Entry # 73), ordered defendant to answer certain portions of the document requests on or before November 3, 2016.<sup>2</sup>

Defendant did not provide plaintiff with the requested documents on or before November 3, 2016 or the answers to the

---

<sup>2</sup> The language of the Order afforded defendant "up to and including November 3, 2016."

interrogatories "within 30 days after being served."  
Fed.R.Civ.P. 33(b)(2). Rather, according to plaintiff,  
defendant's "counsel issued correspondence to plaintiff on  
November 3, 2016" indicating the discovery "will be provided by  
November 14, 2016." (Docket Entry # 85). On November 10, 2016,  
defendant served plaintiff by hand with the answers to the  
interrogatories. (Docket Entry # 87-1, p. 10). On November 15,  
2016, defendant served plaintiff by mail with the response to  
the request for production of documents. (Docket Entry # 87-2,  
p. 3).

#### DISCUSSION

Plaintiff seeks the draconian sanction of a final judgment because defendant did not comply with the October 3, 2016 Order to respond to the document requests and interrogatories by the November 3, 2016 deadline. Defendant contends that a final judgment is not appropriate because he provided plaintiff with the discovery.

Under Fed.R.Civ.P. Rule 37(b) ("Rule 37(b)"), a court may render a default judgment against a defendant who fails to comply with a discovery order. Fed.R.Civ.P. 37(b)(2)(A)(vi); Ramirez v. T&H Lemont, Inc., 845 F.3d 772, 779 (7th Cir. 2016) ("Rule 37(b)(2)(A)(v) and (vi) authorizes both the dismissal of the action and the entry of a default judgment against the

offending plaintiff or defendant"). In order to invoke Rule 37(b) sanctions, the recalcitrant party must fail "'to obey an order to provide or permit discovery.'" Melendez-Garcia v. Sanchez, 629 F.3d 25, 33-34 (1<sup>st</sup> Cir. 2010) (quoting Rule 37(b)(2)(A) with internal brackets omitted). Because the October 3, 2016 Order required defendant to respond to the document requests by a set deadline, it constitutes a discovery order within the meaning of Rule 37(b)(2). See id. at 34 n.6; R.W. Intern. Corp. v. Welch Foods, Inc., 937 F.2d 11, 16 (1<sup>st</sup> Cir. 1991). Defendant violated the Order by not responding to the document requests on or before the November 3, 2016 deadline.

Because the Order did not require defendant to answer the interrogatories, however, it cannot serve as the basis for sanctions under Rule 37(b) due to defendant's belated response to the interrogatories. Simply stated, defendant's belated answers to the interrogatories did not violate the October 3, 2016 Order.

In "assessing the appropriateness of a discovery sanction" for the violation of the October 3, 2016 Order vis-à-vis the document requests, this court examines "[t]he totality of the circumstances." Mulero-Abreu v. Puerto Rico Police Dept., 675 F.3d 88, 93 (1<sup>st</sup> Cir. 2012); Moulton Bane v. Moulton, 2015 WL

12990224, at \*3 (D.N.H. Nov. 10, 2015) (whether to enter default under Rule 37(b)(2) "depends on the totality of the circumstances"). Relevant factors to consider "include 'the severity of the violation, the legitimacy of the party's excuse, repetition of violations, the deliberateness vel non of the misconduct, mitigating excuses, prejudice to the other side and to the operations of the court, and the adequacy of lesser sanctions.'" Vallejo v. Santini-Padilla, 607 F.3d 1, 8 (1<sup>st</sup> Cir. 2010) (quoting Robson v. Hallenbeck, 81 F.3d 1, 2 (1<sup>st</sup> Cir. 1996)). Here, the violation was minor as opposed to severe. Defendant's counsel communicated with plaintiff regarding the belated production and, accordingly, there is no evidence that defendant acted deliberately. Defendant has not engaged in repeated violations of court orders and there is no showing of any prejudice to plaintiff caused by the estimated two-week delay in receiving the response to the document requests. Weighing and balancing all of the relevant facts, a sanction of entering a final judgment under Rule 37(b)(2) is not warranted.

Separately, the inherent power of this court may also provide a basis to impose sanctions due to the belated production of the answers to interrogatories and the response to the document requests. Federal courts have "certain 'inherent powers,' not conferred by rule or statute, 'to manage their own affairs so as to achieve the orderly and expeditious disposition

of cases.'" Goodyear Tire & Rubber Co. v. Haeger, 2017 WL 1377379, at \*5 (U.S. Apr. 18, 2017) (quoting Link v. Wabash R. Co., 370 U.S. 626, 630-631 (1962)); accord Vázquez-Rijos v. Anhang, 654 F.3d 122, 127 (1st Cir. 2011) ("to operate effectively and administer justice properly, courts must have the leeway 'to establish orderly processes and manage their own affairs'"). This "authority includes 'the ability to fashion an appropriate sanction for conduct which abuses the judicial process.'" Id. (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 44-45 (1991)); see Young v. Gordon, 330 F.3d 76, 81 (1st Cir. 2003). Pursuant to this authority, this court has the power to enter a default judgment against defendant for discovery abuses. See Secrease v. W. & S. Life Ins. Co., 800 F.3d 397, 401 (7th Cir. 2015); Brockton Savings Bank v. Peat, Marwick, Mitchell & Co., 771 F.2d 5, 11-12 (1st Cir.1985) (inherent power allows entry of default judgment for abuse of discovery process). Defendant's conduct of belatedly answering the interrogatories, see Fed.R.Civ.P.33(b)(2), and violating the October 3, 2016 Order by not providing the response to the document requests by November 3, 2016, however, falls well below the kind of conduct that permits the entry of a judgment under the inherent powers of this court.

Defendant additionally argues that a denial of the motion is appropriate because plaintiff failed to comply with Rule

37(a)(1) by certifying he “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.” (Docket Entry # 87) (quoting Rule 37(a)(1)). In light of the denial based on the nature of the conduct, it is not necessary to address this argument.

CONCLUSION

In accordance with the foregoing discussion, the motion for a final judgment (Docket Entry # 85) is **DENIED**.

/s/ Marianne B. Bowler  
**MARIANNE B. BOWLER**  
United States Magistrate Judge