

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY REYNOLDS,

Plaintiff,

CIVIL ACTION NO. 12-CV-11664

vs.

DISTRICT JUDGE PAUL D. BORMAN

SANDRA BANKS, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

**OPINION AND ORDER GRANTING IN PART PLAINTIFF'S MOTION TO COMPEL
DISCOVERY (DOCKET NO. 37), AND GRANTING PLAINTIFF'S MOTION TO
AMEND COMPLAINT (DOCKET NO. 42)**

These matters come before the Court on two motions. The first motion is Plaintiff Larry Reynold's Motion to Compel Discovery. (Docket no. 37). The second motion is Plaintiff's Motion to Amend Complaint pursuant to Fed.R.Civ.P. 15(a). (Docket no. 42). Defendant did not file a response to either motion. The Motions were referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket nos. 38, 46). The Court heard oral argument on these motions on June 26, 2013. Plaintiff appeared at the hearing on these motions with counsel. *Pro se* Defendant Sandra Banks also appeared at the hearing. The motions are now ready for ruling.

1. Plaintiff's Motion to Compel Discovery

On September 28, 2012, Plaintiff's First Request For Admissions, Interrogatories and Requests For Production of Documents were served upon Defendant Banks. (Docket no. 37, ex. 1). Plaintiff states that he served the discovery requests by email and by United States mail to Plaintiff's address of record. Under Federal Rules of Civil Procedure 33(b)(2), 34(b)(2), and 36(a)(3)

Plaintiff's responses to these requests were due within thirty days after service of the discovery requests. In the instant motion, Plaintiff states that Defendant failed to serve responses to the discovery requests. Defendant argues that she did not receive the requests until after the motion was filed and acknowledges that she has not responded to the requests.

In his first set of discovery requests, Plaintiff propounded twenty-four interrogatories followed by sub-interrogatories numbered 1-A through 20-T, for a total of 44 interrogatories. Federal Rule of Civil Procedure 33(a)(1) limits the number of interrogatories to twenty-five unless otherwise stipulated or ordered by the Court. Defendant has not stipulated to answer more than twenty-five interrogatories and no order has been entered permitting Plaintiff to serve more than twenty-five interrogatories. Thus, the Court will deny Plaintiff's Motion to Compel Discovery with respect to the interrogatories.

Regarding Defendant's Request for Admissions, Federal Rule of Civil Procedure 36 permits a party to serve on any other party a written request to admit the truth of any matters within the scope of Rule 26(b)(1). If the party to whom the request is directed fails to respond within thirty days, the matter is admitted and is conclusively established. Fed.R.Civ.P. 36(a)(3), (b). On motion, the Court may permit the admission to be withdrawn. Fed.R.Civ.P. 36(b). Plaintiff served twenty-four requests to admit in his first discovery requests. Defendant failed to respond to the requests. Accordingly, pursuant to Rule 36, the twenty-four requests are admitted and conclusively established for purposes of this litigation. However, at the hearing on this motion Defendant made an oral motion to withdraw the admissions, which the Court granted. The Court will therefore deny Defendant's request to deem matters admitted and instead will order Defendant to respond to the request for admissions by a date certain.

2. Plaintiff's Motion to Amend Complaint

Plaintiff moves for leave to file a third amended complaint to add Larry Demps, a founding member of *The Dramatics*, as a plaintiff. Federal Rule of Civil Procedure 15(a)(2) states that the Court should freely give leave when justice so requires. Accordingly, the Court will grant Plaintiff's motion to amend his complaint.

IT IS THEREFORE ORDERED that Defendant's Motion to Compel Discovery (docket no. 37) is **GRANTED IN PART**. On or before August 12, 2013, Defendant must:

1. produce and serve upon Plaintiff all documents Defendant has within her possession, custody, or control that are responsive to Plaintiff's First Request for Production of Documents numbers 21-25.
2. serve on Plaintiff full and complete written responses to Plaintiff's First Request for Admissions numbers 1-24.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel responses to interrogatories is denied.

IT IS FURTHER ORDERED that Plaintiff's Motion to Amend Complaint (docket no. 42) is **GRANTED**. Plaintiff must file his third amended complaint by July 26, 2013. Defendant must serve an answer to the complaint or motion under Fed.R.Civ.P. 12 within twenty-one days after receiving service of the amended complaint but no later than August 16, 2013.

NOTICE TO THE PARTIES

Pursuant to Federal Rule of Civil Procedure 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: July 8, 2013

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Sandra Banks and Counsel of Record on this date.

Dated: July 8, 2013

s/ Lisa C. Bartlett
Case Manager