

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOSE LUIS SANTOS,

Plaintiff,

v.

Case No. 16-cv-1362-pp

MARK R. KARTMAN,
and LORIE IVERSON,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF
ORDER DENYING MOTION TO COMPEL (DKT. NO. 30), GRANTING
DEFENDANTS' MOTION FOR PROTECTIVE ORDER (DKT. NO. 36), AND
DENYING PLAINTIFF'S MOTION TO STRIKE DECLARATION (DKT. NO. 43)**

1. Motion for Reconsideration and Motion for Protective Order

On June 30, 2017, the court denied the plaintiff's motion to compel the production of a confidential document that the defendants refused to produce in response to a discovery request, because the court found that the plaintiff's motion was premature. Dkt. No. 28. On July 10, 2017, the plaintiff filed a motion for reconsideration of the court's order denying his motion to compel. Dkt. No. 30. The defendants oppose the motion, and have asked the court to enter a protective order in connection with the confidential document. Dkt. No. 36. On August 14, 2017, the court ordered the defendants to deliver a copy of the confidential investigation report to the court's chambers for an *in camera* review. Dkt. No. 41 at 6. The court stated that it would determine whether, as the defendants represented, defendant Kartman's response to the plaintiff's

interrogatory about the document was complete and accurate. Id. The court also stated that if Kartman's response was complete and accurate, the plaintiff had given the court no reason to order that the defendants produce the document. Id. The court indicated that it would enter a decision on that aspect of the motion for reconsideration and on the defendant's motion for a protective order once it reviewed the document. Id.

The court has reviewed the confidential document; it says nothing about why the plaintiff was fired from his job, and does not allege that the plaintiff did anything wrong. Kartman's response to the plaintiff's interrogatory about the document was complete and accurate. See Dkt. No. 37 at 4 (citing Dkt. No. 31-1 at 1-2). As explained in the court's August 14, 2017 order, the court will deny the plaintiff's motion for reconsideration and grant the defendants' motion for protective order. See Dkt. No. 41 at 4-6.

2. Motion to Strike

On October 6, 2017, the plaintiff filed a motion to strike defendant Kartman's declaration filed in support of the defendants' motion for summary judgment, pursuant to Federal Rule of Civil Procedure 12(f). Dkt. No. 43. The plaintiff takes issue with paragraph 17 of Kartman's declaration, which states: "Santos' race is listed in the Wisconsin Department of Correction centralized computer system as white." Dkt. No. 23 at ¶17. The plaintiff states that the defendants lied in the declaration. Dkt. No. 43 at 1. In support of his assertion, the plaintiff submits a Wisconsin Department of Corrections document that

lists his race as Hispanic. Dkt. No. 44-1. The defendants oppose the plaintiff's motion.

The court will not strike Kartman's declaration. First, Rule 12(f) applies to pleadings; it does not authorize courts to strike a declaration. Second, the fact that the one Department of Corrections document that the plaintiff submitted states that the plaintiff is Hispanic does not prove that defendant Kartman lied when he said that the DOC's *computer system* lists the plaintiff's race as white; the DOC's records may well be inconsistent. Third, the court will not rely on paragraph 17 of Kartman's declaration in its summary judgment analysis. As the defendants explain in their response to the plaintiff's motion to strike, the defendants argue in their summary judgment brief that the plaintiff's equal protection claim fails because Kartman did not know that the plaintiff was Hispanic. Dkt. No. 45 at 2. The defendants cite to paragraph 17 of Kartman's declaration in support of that argument. See id. The plaintiff's summary judgment response points out that he looks Latino and has a Latino first, middle and last name. Id. (citing Dkt. No. 32 at ¶19). Based on the plaintiff's response, the defendants now have conceded that whether the defendants knew the plaintiff's race was Hispanic constitutes a disputed issue of fact.¹ Id. For all of these reasons, the court will deny the plaintiff's motion to strike.

¹ The defendants contend that the court should grant their motion for summary judgment on other grounds. Id. The court will resolve the defendants' summary judgment motion in a subsequent order.

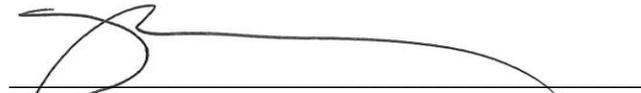
The court **DENIES** the plaintiff's motion for reconsideration of order denying motion to compel. Dkt. No. 30.

The court **GRANTS** the defendants' motion for protective order. Dkt. No. 36.

The court **DENIES** the plaintiff's motion to strike declaration. Dkt. No. 43.

Dated in Milwaukee, Wisconsin this 11th day of January, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

HON. PAMELA PEPPER
United States District Judge