

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT W. TESSEN,

Plaintiff,

v.

KENT LEPAK,

Defendant.

ORDER

08-cv-556-slc

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Now before the court is plaintiff's motion to compel discovery, dkt. # 36. In plaintiff's second request for production of documents, he requested the transcript of the June 13, 2008 audio recording of the investigation and the actual recording itself. Defendant responded that no complete transcript had been prepared, but provided plaintiff with a compact disc that contained the audio recording of the investigation.

In his motion to compel, plaintiff seeks the transcript of the investigation, stating that he is not allowed to have the compact disc at the institution where he is confined. As defendant points out, pursuant to Fed. R. Civ. P. 34, he is not required to transcribe the recording at his own expense merely to furnish plaintiff with a copy of the transcript. However, because defendant has had a transcript prepared of a small portion of the one hour and fifteen minute record, he has provided a copy of that transcript to plaintiff.

I will deny plaintiff's motion to compel the production of the entire transcript of the audio recording because it does not exist. Further, I will not assess costs to either party.

ORDER

IT IS ORDERED that plaintiff's motion to compel discovery, dkt. # 36, is DENIED.

Entered this 27<sup>th</sup> day of March, 2009.

BY THE COURT:

/s/

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STEPHEN L. CROCKER  
Magistrate Judge