

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MICHAEL D. VAN DEELEN,)
)
 Plaintiff,)
)
 v.) Case No. 05-4039-SAC
)
 MARION JOHNSON, et al.,)
)
 Defendants.)

ORDER

This matter comes before the court upon plaintiff's motion to compel discovery (Doc. 57). Defendants have filed a response to plaintiff's motion (Doc. 58), indicating that they will provide the requested discovery, i.e. identify by Bates number the documents they have already produced that they believe to be responsive to plaintiff's Request for Production No. 1.

Based upon this apparent acquiescence, the court directed a member of its staff to contact plaintiff to determine whether he considered the dispute underlying the instant motion to be resolved. Plaintiff indicated that defendants had provided him with the Bates number information sought by his motion, and that he would not be filing any reply to defendants' response, but that he did not wish to withdraw the motion to compel because he wanted the court to consider whether to order the defendants to withdraw their earlier objection to the discovery at issue. Plaintiff stated that his concern was to make certain that defendants were under a continuing obligation to supplement their response if they later acquired different or additional responsive information.

In his motion to compel, plaintiff reports that defendants initially objected to his Request for Production No. 1 as "vague and ambiguous, overly broad and not reasonably calculated to lead to the

discovery of admissible evidence.” He further reports that defendants later informed him that they had already provided documents to him responsive to his request, and it was at this point that he filed the instant motion to compel seeking to have those documents identified by Bates number.

The court finds that defendants effectively abandoned any objection they may have raised to plaintiff’s Request for Production No. 1 at the time they informed plaintiff that they had provided him with all documents responsive to the request. As such, to the extent defendants’ ultimate response to plaintiff’s request is subject to the continuing duty to seasonably supplement pursuant to Fed. R. Civ. P. 26(e), the court finds that they are in no way relieved of that duty by virtue of their initial objection to the request.

Therefore, having reviewed the motion and response and found that the parties are in agreement and that plaintiff was provided with the discovery sought in the motion to compel, the court finds that the motion should be granted and that any duty to supplement that is appropriate with regard to defendants’ response to plaintiff’s Request for Production No. 1 continues to apply notwithstanding defendants’ original objection to plaintiff’s request.

IT IS THEREFORE ORDERED that plaintiff’s motion to compel discovery (Doc. 57) is hereby granted.

IT IS SO ORDERED.

Dated this 3rd day of November, 2005, at Topeka, Kansas.

s/K. Gary Sebelius
K. Gary Sebelius
U.S. Magistrate Judge