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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Vina Yazzie,

10 Plaintiff,

11 v.

12 Mohave County, Steve Latoski, Ramon
13 Osuna, Kevin Stockbridge and Warren
Twitchel,

14 Defendants.
15

No. CV-14-08153-PCT-JAT

ORDER

16 On April 1, 2015, Defendants filed a partial motion for judgment on the pleadings.
17 After numerous extensions, Plaintiff responded on August 14, 2015. At Defendants'
18 request, this Court held oral argument on October 27, 2015. At oral argument, Plaintiff's
19 counsel argued that Plaintiff had evidence relevant to equitable tolling and that the
20 motion for judgment on the pleadings (as to the exhaustion argument) would have been
21 more properly filed as a Federal Rule of Civil Procedure 56 motion.

22 While the Court was very disappointed that counsel would wait almost seven
23 months to argue that a motion needed to be considered under a different procedural
24 mechanism, the Court nonetheless converted the motion for judgment on the pleadings to
25 a motion under Rule 56, and permitted counsel to respond and present evidence. Doc.
26 68.

27 Apparently, the Court's order converting the motion for judgment on the pleadings
28 to a motion under Rule 56 was ambiguous because Plaintiff's counsel literally just

1 submitted evidence. This was not the Court's intent. Once the motion was converted (as
2 to the exhaustion issue), Plaintiff needed to respond as she would to any other motion for
3 summary judgment, including filing a memorandum of points and authorities, a statement
4 of facts, and then appropriately attaching evidence to the statement of facts. This Court
5 will not undertake to review Plaintiff's evidence and hypothesize arguments for how
6 those pieces of evidence might qualify Plaintiff for equitable tolling, and/or for how long
7 such tolling might be appropriate.

8 Accordingly,

9 **IT IS ORDERED** that Plaintiff's supplemental response filed at Doc. 70 is
10 stricken.

11 **IT IS FURTHER ORDERED** that Plaintiff shall file a supplemental response
12 that fully complies with Federal Rule of Civil Procedure 56 and Local Rule Civil 56.1 by
13 Tuesday, November 10, 2015. If Plaintiff fails to file a complying response within this
14 deadline, the Court will deem all of Plaintiff's procedural objections to this Court
15 considering the pending motion as one for judgment on the pleadings to be waived.

16 Dated this 6th day of November, 2015.

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James A. Teilborg
Senior United States District Judge