

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

RODNEY STEVEN PERRY, SR.,)	
)	
Plaintiff,)	
)	
vs.)	No. 1:17-cv-00216-TWP-DML
)	
GREG NOLL PCF Dentist,)	
CORIZON HEALTH,)	
)	
Defendants.)	

**Entry Denying Motion for Summary Judgment
 And Granting Plaintiff the Opportunity to Respond to Defendants’ Evidence**

I.

Plaintiff Rodney Steven Perry, Sr., seeks summary judgment based on the theory that because he exhausted his administrative remedies prior to filing this civil rights action that he is entitled to relief. In response, the defendants do not dispute that Mr. Perry exhausted his administrative remedies, but argue that he has not shown that he is entitled to judgment as a matter of law on the merits of his claims.

The motion for summary judgment, dkt [27], is **summarily denied as moot**. The reason for this ruling is that the defendants have not asserted the affirmative defense that the plaintiff failed to exhaust his administrative remedies prior to filing this lawsuit. Accordingly, this issue is not disputed and no judicial ruling is necessary. *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008) (discussing affirmative defense of exhaustion).

Accordingly, the parties should continue to participate in discovery and shall file any dispositive motion on the merits of the plaintiff’s claims by December 12, 2017.

II.

The plaintiff's motion requesting the right to respond in opposition to the affidavit of Gregg Noll, D.D.S., dkt [37], is **granted** to the extent that the plaintiff may oppose the defendants' evidence if it is presented in a dispositive motion or at trial consistent with the Federal Rules of Civil Procedure. No ruling on the merits of the plaintiff's claims or the admissibility of the parties' evidence is appropriate or necessary at this point in the litigation.

IT IS SO ORDERED.

Date: 10/6/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

Distribution:

All Electronically Registered Counsel

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