

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CORNELL SMITH,

Plaintiff,

v.

Case No. 21-C-242

NICHOLAS SANCHEZ, et al.,

Defendants.

DECISION AND ORDER

Plaintiff Cornell Smith is representing himself in this 42 U.S.C. §1983 action. He is proceeding on Eighth Amendment claims against two corrections officers and an unidentified nurse in connection with an incident on July 2, 2017. *See* Dkt. No. 24 at 5-6. On October 5, 2021, Defendants Thomas O'Neill and Nicholas Sanchez filed a motion for summary judgment on the ground that Smith failed to exhaust the available administrative remedies before initiating this lawsuit. Dkt. No. 29. That same day, they also filed a motion to stay discovery, except for discovery related to exhaustion, until their motion for summary judgment is resolved. Dkt. No. 33.

In its screening order, the Court ordered that the parties may not begin discovery until after the Court enters a scheduling order setting deadlines for discovery and dispositive motions. The Court has not entered a scheduling order. Because discovery is not yet open, the Court will deny as moot Defendants' motion to stay discovery. The Court will open discovery on the merits only if Defendants' motion for summary judgment for failure to exhaust is denied. Smith's materials in response to Defendants' motion for summary judgment are due November 4, 2021. *See* Dkt.

No. 34. If Smith believes he needs discovery *on the issue of exhaustion* (not on the merits of his claim) he must notify the Court before the November 4 deadline. If, before the deadline, Smith does not respond to Defendants' motion or inform the Court that he needs more time to do so, the Court will accept all facts asserted by Defendants as undisputed and may grant their motion as a sanction for Smith's failure to comply with the Local Rules and the Court's orders.

IT IS THEREFORE ORDERED that Defendants' motion to stay (Dkt. No. 33) is **DENIED as moot**.

Dated at Green Bay, Wisconsin this 7th day of October, 2021.

s/ William C. Griesbach

William C. Griesbach
United States District Judge