

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ASUA BUIE,

Plaintiff,

v.

Case No. 14-cv-1375-pp

FLOYD MITCHELL,  
IONE GUILLONTA,  
BRUCE BUEGE,  
HEATHER PAULSON,  
CHARLES FACKTOR,  
CINDY O'DONNELL,  
ANA BOATWRIGHT,  
CHRIS LOBERG,  
KELLY QUARLES, AND  
KELLI R. WILLARD WEST,

Defendants.

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**ORDER GRANTING PLAINTIFF'S REQUEST TO ACCEPT RESPONSE TO  
SUMMARY JUDGMENT (DKT. NO. 130) AND DIRECTING DEFENDANTS TO  
FILE SUMMARY JUDGMENT REPLY WITHIN FOURTEEN DAYS OF THE  
DATE OF THIS ORDER**

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The defendants filed a motion for summary judgment on March 17, 2017. Dkt. No. 102. Since then, the court has granted three motions from the plaintiff for extensions of time to file his response. Dkt. Nos. 119, 120 and 123. On September 19, 2017, the court issued an order to show cause, giving the plaintiff until October 20, 2017 to file his summary judgment response and to explain why he had not filed a response by the last deadline the court had set. Dkt. No. 127. In the order, the court warned the plaintiff that if he did not file his response and explanation by October 20, 2017, the court would rule on the

defendants' summary judgment motion without any input from the plaintiff. Id. at 3. The court also stated that, because it already had granted the plaintiff three extensions of time, it would not entertain any further motions for an extension of time. Id. at 3-4.

The court mailed the September 19, 2017 order to the plaintiff at his last known address, which was the Milwaukee County House of Corrections. On September 26, 2017, the order came back to the court as undeliverable. Also on September 26, 2017, the plaintiff telephoned the court and provided a new address, a street address in Milwaukee, Wisconsin. The court then mailed a copy of the September 19, 2017 order to the plaintiff at that new address.

The plaintiff did not file a response and explanation by October 20, 2017. Rather, on November 22, 2017, the court received from him a response to the defendants' motion for summary judgment, along with a request that the court accept his tardy response. Dkt. Nos. 128, 130. The plaintiff's summary judgment response consists of a brief, two declarations, proposed findings of fact, and a response to the defendants' proposed findings of fact. Dkt. Nos. 128-134. In the plaintiff's motion asking the court to accept his summary judgment response, he states that he is homeless, which has hindered him from timely responding to the court and from filing a response. Dkt. No. 130 at 1-2.

The defendants oppose the plaintiff's request. Dkt. No. 136. They state that the court should not consider the plaintiff's summary judgment response because his request is unsworn and contains only a vague explanation that his

homelessness has hindered him from accessing resources to timely respond. Id. at 2. The defendants also question how the plaintiff lacked the resources to draft a response or even contact the court prior to October 20, 2017, yet by November 22, 2017, managed to file a comprehensive summary judgment response. Id. The defendants conclude that the court should disregard the plaintiff's filing and consider their motion unopposed. Id. at 3. The defendants ask that if the court decides to accept the plaintiff's filing, it give them fourteen days to file a reply. Id.

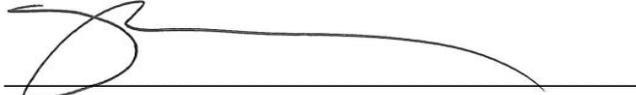
The plaintiff's failure to file a timely response appears to be related to his unstable housing situation, rather than a blatant disregard of the court's order. The court prefers to resolve cases on the merits rather than on technical or procedural grounds. While the plaintiff did not comply with the court's order in terms of timeliness, he now has filed his response, which means that the court can resolve the summary judgment motion. Under these circumstances, the court will grant the plaintiff's request and consider the plaintiff's summary judgment response.

The court **GRANTS** the plaintiff's request to accept his response to defendants' motion for summary judgment. Dkt. No. 130. The court **ORDERS** that if the defendants wish to file a reply in support of their motion, they must

do so within fourteen days of the date of this order (by Friday, January 26, 2018).

Dated in Milwaukee, Wisconsin this 11th day of January, 2018.

**BY THE COURT:**

A handwritten signature in black ink, appearing to read 'P. Pepper', is written over a horizontal line.

**HON. PAMELA PEPPER**  
**United States District Judge**