IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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LINDA J. BOYEA,

                                                                    ORDER
                              Plaintiff,
                                                                    04-C-403-C
              v.

PAROC, INC., d/b/a
FANTASTIC SAMS,

                              Defendant.

- -

Plaintiff is proceeding pro se in this civil action alleging violations of her rights under

the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-34, the Americans with

Disabilities Act, 42 U.S.C. § 12131 et seq., and the Federal Family and Medical Leave Act,

29 U.S.C. §§ 2601 - 2654. On July 26, 2004, defendant filed an answer to plaintiff's

complaint. Now plaintiff has filed a document titled "Response to Dispositive Motion

Received on July 27, 2004," in which she replies to factual statements made in the answer

and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's

allegations of fact, even if accepted as true, would be insufficient to make out a legal claim

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against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that she is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that she has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to the answer will be placed in the court's file but will not be considered.

Entered this 2nd day of August, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge

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