

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RUSSEL L. SINGLETARY,

Plaintiff,

v.

ORDER

06-C-323-C

JAMES W. REED, M.D.  
CHIEF MEDICAL DIRECTOR  
FCI OXFORD  
OXFORD, WISCONSIN,

Defendant.  
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Plaintiff Russel Singletary has been allowed to proceed in forma pauperis in this Bivens action on a claim that his Eighth Amendment rights were violated when defendant Reed deliberately failed to provide him with certain medications after plaintiff had a colon polyp surgically removed. On September 15, 2006, defendant answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a document titled "Response of the Plaintiff to Oppose the Respondent's Motion to Dismiss this Action with Prejudice Pursuant to Rule 12(b)(6)," in which he 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 a defendant 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 against the defendant. Although defendant Reed has raised certain affirmative defenses in his answer he has 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 defendant's 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 he 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 defendant Reed's answer, the court assumes that he 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 4th day of October, 2006.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge