IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CLAYTON HARDY MELLENDER,

Plaintiff, MEMORANDUM

v. 06-C-298-C

DANE COUNTY and DR. JOHN DOE,

Defendants.

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Plaintiff is proceeding pro se and in forma pauperis in this civil action in which he alleges that defendants exhibited deliberate indifference to his serious medical needs by discontinuing his prescription methadone prescription and enforcing a policy that restricts inmates from receiving prescription methadone. On August 3, 2006, defendant Dane County filed an answer to plaintiff's complaint, raising several affirmative defenses and requesting dismissal of the complaint. Now plaintiff has written to ask whether he is to treat defendant's answer as a motion to dismiss. He is not.

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 Dane County concludes its answer by requesting

dismissal of the action, it has not filed a motion to dismiss the case on its merits and it is not likely that it will. In screening plaintiff's complaint, I have determined already that the complaint states a claim upon which relief may be granted. In any event, plaintiff should be aware that, pursuant to Fed. R. Civ. P. 8(d), averments in pleadings to which a response is not allowed (such as an answer) are assumed to be denied. Therefore, although plaintiff will not be permitted to respond to defendant's answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

Entered this 18th day of August, 2006.

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