

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

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SAMUEL S. UPTHEGROVE,

Plaintiff,

v.

ORDER  
08-cv-552-slc

CHARLES TUBBS, PAUL WESTERHOUSE,  
MR. OURADA, BRUCE SUNDE, TERRY TIMM  
and JOHN DOE #1,

Defendants.

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On January 22, 2009, this court issued a pretrial conference order discussing the procedures to be followed if a defendant wishes to obtain summary judgment on the basis of a plaintiff's failure to exhaust his administrative remedies. The court stated as follows:

the parties do not need to follow the court's Procedure On Summary Judgment, which applies to any other summary judgment motion filed in this court. Instead, the moving defendant may submit a motion, supporting affidavits, relevant exhibits, and a supporting brief. The defendant need not submit a separate document containing proposed findings of fact, so long as the material facts can be found in the supporting affidavits and exhibits.

Plaintiff must file and serve any response in opposition to such a motion not later than 14 days after receiving a copy of the motion and supporting materials. Plaintiff may file a responsive brief, affidavits and exhibits which must be relevant to and limited to the question whether plaintiff has adequately exhausted his administrative remedies

on his claims. The plaintiff need not submit a separate document containing proposed findings of fact, so long as any material facts can be found in the supporting affidavits and exhibits.

On February 20, 2009, defendants filed a motion for summary judgment based upon plaintiff's failure to exhaust administrative remedies. However, they did not follow the above procedures. Therefore, some clarification is needed. The court will not consider defendant's proposed findings of fact. Plaintiff need not file responses to these facts but needs only file a responsive brief, affidavits and exhibits, relevant to the limited question of whether he has adequately exhausted his administrative remedies. This material should be filed no later than March 6, 2009, and defendants may file a reply no later than March 13, 2009.

#### ORDER

IT IS ORDERED that plaintiff's response to defendant's motion for summary judgment on the issue of failure to exhaust administrative remedies is to be filed no later than March 6, 2009; defendants may reply no later than March 13, 2009.

Entered this 23<sup>rd</sup> day of February, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge