

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-cv-20782-MARTINEZ/GOODMAN

DENNIS MONTGOMERY,

Plaintiff,

v.

JAMES RISEN et al.,

Defendants.

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**DEFENDANTS' RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE  
OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

For the following reasons—each of which Plaintiff omitted from his Motion for Extension of Time to File an Opposition to Defendants' Motion for Summary Judgment (“Motion for Extension of Time”), ECF No. 221—the Court should deny the Motion for Extension of Time as presented and require Plaintiff to file his memorandum of law in opposition to Defendants' Motion for Summary Judgment (the “Opposition”) by 3 p.m. EST on Tuesday, January 12, 2016.

First, this is Plaintiff's second motion for an extension of time to respond to Defendants' Motion for Summary Judgment, the first—to which Defendants consented—being filed on December 27, 2015. ECF No. 208.

Second, Plaintiff's counsel only conferred about this second motion for an extension at 3:32 p.m. EST on Friday, January 8, 2016—hours before the Opposition was due to be filed. So that they and the mediator could have the benefit of Plaintiff's Opposition *before* January 13, 2016—the date of the court-ordered mediation—Defendants offered to agree to an extension through Monday, January 11, 2016, so long as Plaintiff's counsel agreed that Defendants could

have 14 days to file their reply memorandum in support of their Motion for Summary Judgment (i.e., until January 25, 2016, which is when Defendants' reply memorandum would be due if Plaintiff filed his Opposition on January 13, 2016). Plaintiff's counsel stated that filing his Opposition on January 11, 2016 (and thus before the mediation) was insufficient.

Third, Plaintiff states without explication that "to adequately and completely respond to the Defendants' summary judgment motion, Plaintiff requires the transcript of the hearing before Magistrate Judge Jonathan Goodman last Tuesday, January 5, 2015," and states that the "proceedings set forth on this transcript are crucial to Plaintiff's response." Mot. Extension Time ¶ 6. Judge Goodman, however, received solely argument—and not evidence—at the sanctions hearing related to Defendants' motion addressing Plaintiff's spoliation of critical evidence, and so nothing on the transcript of that hearing would reasonably be usable by Plaintiff in his core objective of "asserting that a fact ... is genuinely disputed." Fed. R. Civ. P. 56(c)(1). Not surprisingly, therefore, Plaintiff neglected to illuminate what on the transcript is needed for his Opposition.

Last, by filing the Motion for Extension of Time after the close of business on the evening his Opposition was due, Plaintiff effectively gave himself an extension of time at least until Monday, January 11, 2016, without prior Court approval. The Court should not reward this conduct by allowing Plaintiff to withhold filing his Opposition until after the court-ordered mediation scheduled for January 13, 2016 at 9 a.m. EST. It should instead require that Plaintiff file his Opposition no later than 3 p.m. EST on Tuesday, January 12, 2016. Doing so would not (fully) reward Plaintiff for it would not grant him full relief, and it would permit Defendants and the mediator to review the Opposition before the mediation.

For these reasons, Defendants respectfully request that the Court enter an order denying the Motion for Extension of Time and requiring Plaintiff to file his Opposition to Defendants' Motion for Summary Judgment by 3 p.m. EST on Tuesday, January 12, 2016.

Dated: January 10, 2016

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that on January 10, 2016, I filed this document with the Clerk of Court using CM/ECF, which will serve this document on all counsel of record.

s/Brian W. Toth