IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MATTHEW HALE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil No. 23-cv-01296-DWD
	)	
FEDERAL BUREAU OF PRISONS,	)	
	)	
Defendant.	)	

DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT AND RESPONSE TO THE COURT'S ORDER CONCERNING COUNSEL

COMES NOW Defendant Federal Bureau of Prisons ("Defendant"), by and through its attorneys, Steven D. Weinhoeft, U.S. Attorney for the Southern District of Illinois, and Assistant U.S. Attorney Kyle Christopher Oehmke, and for its Reply to Plaintiff's Response in Support of Motion for Relief from Judgment and Response to the Court's Order Concerning Counsel (Doc. 107), states as follows:

On August 20, 2026, Plaintiff --- while represented by Timothy Murphy, Esq. ("Attorney Murphy") --- personally filed a Motion for Relief from Judgment (Doc. 104) pursuant to Federal Rule of Civil Procedure 59(e) that sought, *inter alia*, vacatur of the Court's Order granting Defendant's Motion for Summary Judgment (Doc. 101). *See* Doc. 104, ¶ 6. The Court allowed Attorney Murphy and Defendant to each file a response to Plaintiff's Motion, *see* Doc. 105, and both did so. *See* Docs. 106, 107. In Attorney Murphy's Response (Doc. 107), he addresses the argument made by Plaintiff pursuant to Rule 59(e), which Defendant already discussed in its Response (Doc. 106).[1] Attorney Murphy also advances a new argument for Plaintiff --- specifically, he seeks, *inter alia*, vacatur of the Court's award of summary judgment pursuant to

[1]Defendant incorporates its Response (Doc. 105) as if fully set forth herein.

Rule 60(b)(1) due to Attorney Murphy's "excusable neglect". Defendant submits this Reply to address this new argument, which Plaintiff himself did not see fit to raise. *See* Doc. 104.

Federal Rule of Civil Procedure 60(b)(1) states, "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: mistake, inadvertence, surprise, or excusable neglect[.]" "Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional circumstances." *Mares v. Busby*, 34 F.3d 533, 535 (7th Cir. 1994) (quoting *Dickerson v. Bd. of Educ.*, 32 F.3d 1114 (7th Cir. 1994)).

"Although attorney carelessness can constitute 'excusable neglect' under Rule 60(b)(1), . . . attorney inattentiveness to litigation is not excusable, no matter what the resulting consequences the attorney's somnolent behavior may have on a litigant." *Easley v. Kirmsee*, 382 F.3d 693, 698 (7th Cir. 2004) (citations omitted). The Seventh Circuit has held an attorney's negligent mistake does not constitute excusable neglect under Rule 60(b). *See Bakery Machinery & Fabrication, Inc. v. Trad. Baking, Inc.*, 570 F.3d 845, 848-49 (7th Cir. 2009) ("Since clients must be held accountable for their attorney's actions, it does not matter where the actions fall between 'mere negligence' and 'gross misconduct.'" (citation omitted)). *See also W. Transp. Co. v. E.I. Du Pont de Nemours and Co.*, 682 F.2d 1233, 1236 (7th Cir. 1982) (noting, if the district judge had granted the plaintiff's Rule 60(b) motion, "it would probably have been an abuse of discretion . . . .").

The *Easley* Opinion is highly analogous to the matter before this Court. In *Easley*, the plaintiff's attorney failed to file a response to a motion for summary judgment. 382 F.3d at 696. More than two months after the response deadline, the district court noted the plaintiff's non-response, adopted the defendants' proposed findings of fact, and awarded summary judgment to the defendants. *Id*. On appeal, the *Easley* Court emphasized "the [district] court's orders were unambiguous, clear, direct and straightforward." *Id*. at 697 (further noting the plaintiff's attorney

never sought clarification of any order). The Seventh Circuit affirmed denial of the plaintiff's Rule 60(b) motion accordingly, noting "[c]lients must be held accountable for the acts and omissions of their attorneys." *Id*. at 699-700 (quoting *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 396 (1993)).

Consistent with *Easley*, this District Court has denied Rule 60(b) motions stemming from counsel's failure to respond to a summary judgment motion. *See, e.g.*, *Widdows v. Jackson Cty.*, Case No. 3:22-CV-00200-NJR, 2025 WL 2643370, at *7 (S.D. Ill. Sept. 15, 2025) ("[T]he Court finds its hands tied here, notwithstanding competent evidence that very well may have persuaded it to deny summary judgment if it had been presented in a timely fashion.); *Gilomen v. Wal-Mart Stores, Inc.*, Case No. 06-142-GPM, 2006 WL 8455855, at *1 (S.D. Ill. Sept. 29, 2006) ("[I]n this Circuit, as a general rule, an attorney's intentional or negligent misconduct, including grossly negligent conduct, is not grounds for Rule 60(b) relief.").

Here, Plaintiff's argument premised upon purportedly "excusable neglect" is well-worn territory within the Seventh Circuit and this District Court, which have repeatedly deemed an attorney's alleged negligence insufficient to sustain a motion under Rule 60(b). Preliminarily, it should be noted Plaintiff *chose* Attorney Murphy to represent him, which is a far cry from the usual circumstance in prisoner litigation. Indeed, the undersigned regularly litigates cases involving federal inmates, many of whom are *pro se* or have counsel appointed by this Court. It should be noted Plaintiff is a law school graduate, whom the Tenth Circuit Court of Appeals found fell "somewhere between a typical *pro se* litigant and a licensed attorney." *Hale v. Fed. Bur. of Prisons*, 759 Fed. Appx. 741, 746 (10th Cir. 2019).

Plaintiff's Response (Doc. 107) offers little excuse for Attorney Murphy's purported neglect --- namely, his failure to respond to the Motion for Summary Judgment --- other than

referencing Defendant's document production.[2] While discovery in this case was somewhat document-intensive due to Plaintiff's numerous writings, each of the Court's case deadlines was clear and unequivocal. *See, e.g.*, Doc. 100 ("Plaintiff's response [to the Motion for Summary Judgment] must be filed by July 10, 2026."). Plaintiff did not seek clarification of the deadline governing dispositive motions or attendant briefing. Nor did Plaintiff respond to the Motion for Summary Judgment despite the lapse of *nearly five months* before the Court ruled on such Motion. This omission represents inattentiveness within reasonable control of Plaintiff and his chosen counsel that must bind Plaintiff. Even if one assumed such omission represented gross misconduct on the part of Attorney Murphy, the Seventh Circuit has made clear this still should not disturb the Court's Judgment. *See Bakery Machinery & Fabrication, Inc.*, 570 F.3d at 848-49.

To allow Plaintiff to vacate the Court's Judgment would essentially upend these proceedings and prejudice Defendant, who should be entitled to rely on the finality of the Court's prior ruling. Both Defendant and the Court exhaustively addressed Plaintiff's claims in their Motion and Order respectively. Plaintiff should be denied any attempt at a second bite of the apple, especially now that the Court has provided written analysis of Plaintiff's claims and Defendant's defenses.

For the foregoing reasons, the Court should deny Plaintiff's argument premised upon Federal Rule of Civil Procedure 60(b).

Respectfully submitted,

STEVEN D. WEINHOEFT
United States Attorney

s/Kyle Christopher Oehmke
KYLE CHRISTOPHER OEHMKE
Assistant United States Attorney

[2]Many of the documents in Defendant's production consisted of writings Plaintiff himself authored. Plaintiff is presumably more familiar with his own writings than any other witness to this case.

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