

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
SHENG-WEN CHENG,

Plaintiff,

-against-

DEPARTMENT OF JUSTICE, and FEDERAL
BUREAU OF INVESTIGATION,

Defendants.

ANALISA TORRES, District Judge:

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23 Civ. 3983 (AT) (GS)

ORDER

On May 12, 2023, *pro se* Plaintiff, Sheng-Wen Cheng, filed this Freedom of Information Act action seeking all unclassified documents that former President Donald J. Trump took from the White House to his private residence at Mar-a-Lago. Compl., ECF No. 1. On May 3, 2024, Defendants, the Department of Justice and Federal Bureau of Investigation, moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. ECF No. 48; see ECF Nos. 49–51. On June 4, 2024, Plaintiff filed a cross-motion for summary judgment and opposition to Defendants’ motion. ECF Nos. 56–57.

On July 16, 2024, the Honorable Gary Stein—to whom this case is referred for a report and recommendation on the motions for summary judgment, ECF No. 24—ordered Defendants to advise the Court as to whether they served a Local Civil Rule 56.2 notice on Plaintiff given his *pro se* status. ECF No. 62. Local Civil Rule 56.2 mandates that “[a]ny represented party moving for summary judgment against a party proceeding *pro se* shall serve and file as a separate document, together with the papers in support of the motion, [the notice detailed in that provision] . . . with the full texts of Fed. R. Civ. P. 56 and Local Civil Rule 56.1 attached.” On July 19, 2024, Defendants informed the Court that they “inadvertently failed to serve the Rule 56.2 notice on Plaintiff with its motion for summary judgment.” ECF No. 63 at 1.

A represented party’s failure to provide the requisite Local Civil Rule 56.2 notice typically warrants denial of the summary judgment motion unless the *pro se* litigant “has demonstrated a clear understanding of the nature and consequences of a summary judgment motion and the need to set forth all available evidence demonstrating a genuine dispute over material facts.” *Thomas v. Jacobs*, No. 22-512, 2024 WL 631404, at *1 (2d Cir. Feb. 15, 2024) (internal quotation marks omitted) (summary order); *cf. Davidson v. Lee*, No. 17 Civ. 9820, 2021 WL 5054118, at *2 (S.D.N.Y. Nov. 1, 2021) (“Plaintiff’s experience with summary judgment motions renders harmless Defendants’ failure to attach the rules to the 56.2 notice.”).

Although Plaintiff has submitted a response to Defendants’ motion, the Court is not persuaded of Plaintiff’s understanding of “the nature and consequences of a summary judgment motion.” *Thomas*, 2024 WL 631404, at *1 (internal quotation marks omitted). “Where the proper notice has not been given, the mere fact that the *pro se* litigant has made some response to the motion for summary judgment is not dispositive where neither his response nor other parts of the record reveal that he understood the nature of the summary judgment process.” *Vital v.*

Interfaith Med. Ctr., 168 F.3d 615, 621 (2d Cir. 1999). While Plaintiff's filing may illustrate his intent to challenge Defendants' motion on the merits, his brief does not clearly illustrate his understanding of the summary judgment process more generally. *Cf. Hafez v. City of Schenectady*, 524 F. App'x 742, 743 (2d Cir. 2013) ("It is reasonably apparent that Hafez understood the nature and consequences of summary judgment, especially given the extensive documentation he submitted along with his response to the motion and his contention that issues of material fact properly resolved by a jury should prevent entry of summary judgment against him.") (summary order).

Accordingly, Defendants' motion for summary judgment is denied without prejudice for failure to comply with Local Civil Rule 56.2. The parties are directed to seek leave from Judge Stein for a briefing schedule on any renewed motions. The Clerk of Court is respectfully directed to terminate the motion at ECF No. 48.

SO ORDERED.

Dated: July 25, 2024
New York, New York



ANALISA TORRES
United States District Judge