

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
EASTERN DIVISION**

BYRON L. CONWAY,  
ADC #113285

PLAINTIFF

v.

2:10-cv-00010-JTK

CORRECTIONAL MEDICAL  
SERVICES, INC., et al.

DEFENDANTS

**ORDER**

This matter is before the Court on the Motion for Judgment on the Pleadings filed by Defendant Wendy Kelley (Doc. No. 65). Plaintiff filed a Response to Defendant's Motion, together with a Motion for Summary Judgment (Doc. No. 102). In her Response to Plaintiff's Motion, Defendant Kelley presents an additional argument in support of her request to be dismissed, that Plaintiff failed to exhaust his administrative remedies with respect to his claim against her (Doc. No. 111). Defendant also presents exhibits and affidavits in support of this defense (Doc. No. 113).

In light of Defendant's additional submissions, the Court finds that Defendant Kelley's Response to Plaintiff's Motion for Summary Judgment should be construed as a Cross-Motion for Summary Judgment, pursuant to Fed.R.Civ.P. 56, and that Plaintiff shall be provided the opportunity in which to file a Response to this Motion, specifically addressing the exhaustion issue. Accordingly,

IT IS, THEREFORE, ORDERED that Defendant's Response to Plaintiff's Summary Judgment Motion is hereby construed as a Cross-Motion for Summary Judgment (Doc. No. 111). The Clerk of the Court is directed to amend the docket entry to reflect this change.

IT IS FURTHER ORDERED that Plaintiff shall file a Response to Defendant's Cross-Motion for Summary Judgment within ten days of the date of this Order.

IT IS SO ORDERED this 1st day of November, 2010.

A handwritten signature in black ink, appearing to read 'J. Kearney', written in a cursive style.

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JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE