

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

ALBERT HERNANDEZ,
ADC #65214

PLAINTIFF

v.

5:09CV00328HLJ

RAMOND MOLDEN, et al.

DEFENDANTS

ORDER

This matter is before the Court on defendants' motion to dismiss, or in the alternative, to consolidate this case (DE #39). Plaintiff has filed a response in opposition to the motion (DE 63).

In support of one of the arguments for dismissal, defendants attach declarations of two individuals, and in his response, plaintiff refers to prior submissions of evidence in support of his complaint. Therefore, the Court finds that defendants' motion should more properly be construed as a motion for summary judgment, and pursuant to Fed.R.Civ.P. 12(d), the Court will grant the parties an opportunity in which to submit additional exhibits in support of their positions. Accordingly,

IT IS, THEREFORE, ORDERED that defendants' motion to dismiss (DE #39) is hereby construed as a motion for summary judgment. The parties may submit additional evidence/exhibits in support of their respective positions, within ten days of the date of this Order. After that time, the Court will render a decision on the motion.

IT IS SO ORDERED this 8th day of March, 2010.

Henry I. Jones, Jr.

United States Magistrate Judge