

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

ALBERT J. STALEY,  
ADC #144308

PLAINTIFF

v.

5:10-cv-00249-JLH-JTK

LARRY D. MAY

DEFENDANT

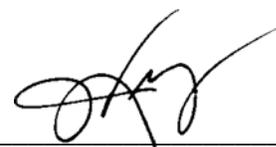
**ORDER**

This matter is before the Court on Defendants’ Motion to Dismiss (Doc. No. 36). Plaintiff in turn filed his own Motion to Dismiss, in which he asks the Court to order the distribution of funds which are at issue in a separate lawsuit, and which prompted the filing of the present lawsuit (Doc. No. 40). By Order dated August 23, 2011 (Doc. No. 41), the Court directed Plaintiff to file a Response to the arguments set forth in Defendant’s Motion within ten days of the date of this Order. As of this date, Plaintiff has not responded to the Motion to Dismiss.

In support of his Motion, Defendant May attaches several exhibits for the Court’s consideration. Pursuant to FED.R.CIV.P. 12 (d), the Court must treat Defendants’ Motion as one for summary judgment pursuant to FED.R.CIV.P. 56, and must give the parties “a reasonable opportunity to present all the material that is pertinent to the motion.” Accordingly,

IT IS, THEREFORE, ORDERED that Defendants’ Motion to Dismiss (Doc. No. 36) be construed as a Motion for Summary Judgment, pursuant to FED.R.CIV.P. 56. Prior to the Court’s consideration of this Motion, the parties shall have ten days from the date of this Order in which to present any additional material pertinent to such Motion.

IT IS SO ORDERED this 22<sup>nd</sup> day of September, 2011.



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JEROME T. KEARNEY  
UNITED STATES MAGISTRATE JUDGE