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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

RICHARD ALAN LAWSON,

Plaintiff,

vs.

DONALD YOUNGBLOOD, et al.,

Defendants.

CASE No. 1:09-cv-00992-LJO-MJS (PC)

ORDER GRANTING PLAINTIFF'S  
URGENT MOTION FOR EXTENSION  
OF TIME TO FILE RESPONSE TO  
MOTION TO DISMISS

(ECF No. 43)

TWENTY-ONE (21) DAY DEADLINE

NOTICE AND WARNING OF  
REQUIREMENTS FOR OPPOSING  
DEFENDANTS' MOTION TO DISMISS

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**I. PROCEDURAL HISTORY**

Plaintiff Richard Alan Lawson ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on June 8, 2009 pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the Magistrate Judge jurisdiction. (ECF No. 5.) Defendants Embrey, Laird and Sawaske have declined Magistrate Judge

1 jurisdiction. (ECF No. 32.)

2 This matter proceeds on Plaintiff's Second Amended Complaint claims for  
3 inadequate medical care against Defendants Laird, Chang, Sawaske, Embrey, and  
4 Clemente, and for excessive force under the Eighth Amendment against Defendant  
5 Laird. Defendants Laird, Sawaske and Embrey filed an Answer on August 1, 2012  
6 (ECF No. 29) and a Motion to Dismiss for Failure to Exhaust Administrative Remedies  
7 on September 6, 2012. (ECF No. 37.) On October 1, 2012, Plaintiff filed an Urgent  
8 Motion to File Responsive Pleadings (ECF No. 43), seeking an extension of time to  
9 oppose Defendants Motion to Dismiss. On October 1, 2012, Defendants Laird,  
10 Sawaske and Embrey filed a Response to Plaintiff's Motion (ECF No. 44), stating their  
11 non-opposition to an extension of time. The Motion is now before the Court.

12 **II. EXTENSION OF TIME**

13 The Court finds that Plaintiff's motion for extension of time is supported by good  
14 cause and unopposed by Defendants. Plaintiff shall within twenty-one (21) days  
15 following service of this order file his response to Defendants' Motion to Dismiss.

16 **III. CURRENT ADDRESS**

17 Plaintiff in his Motion appears to take the position that his current address of  
18 record, California medical Facility, P.O. Box 2500, Vacaville, CA 95696-2500, is not  
19 correct. Plaintiff is required to maintain a current address with the Court. Local Rule  
20 183(b) provides that:

21 Address Changes. A party appearing in propria persona shall keep the Court  
22 and opposing parties advised as to his or her current address. If mail directed  
23 to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal  
24 Service, and if such plaintiff fails to notify the Court and opposing parties within  
25 sixty-three (63) days thereafter of a current address, the Court may dismiss the  
26 action without prejudice for failure to prosecute.

27 Plaintiff shall file any necessary correction of his current address within twenty-  
28 one (21) days of service of this order.

1 **IV. NOTICE AND WARNING**

2 Pursuant to Woods v. Carey, Nos. 09–15548, 09–16113, 2012 WL 2626912  
3 (9th Cir. Jul.6, 2012) and Wyatt v. Terhune, 315 F.3d 1108 (9th Cir.2003), the Court  
4 hereby notifies Plaintiff of the following rights and requirements for opposing the  
5 Motion to Dismiss:

- 6 1. Unless otherwise ordered, all motions to dismiss shall be briefed  
7 pursuant to Local Rule 230(I).
- 8 2. Plaintiff is required to file an opposition or a statement of non-opposition  
9 to Defendants' motion to dismiss. Local Rule 230(I). If Plaintiff fails to file  
10 an opposition or a statement of non-opposition to the motion, this action  
11 may be dismissed, with prejudice, for failure to prosecute. Generally the  
12 opposition or statement of non-opposition must be filed not more than  
13 twenty-one (21) days after the date of service of the motion. Id.
- 14 3. Defendants have filed a motion to dismiss for failure to exhaust the  
15 administrative remedies as to one or more claims in the Complaint. The  
16 failure to exhaust the administrative remedies is subject to an  
17 unenumerated Rule 12(b) motion to dismiss. Wyatt, 315 F.3d at 1119  
18 (citing Ritza v. Int'l Longshoremen's & Warehousemen's Union, 837 F.2d  
19 365, 368 (9th Cir.1988)). In deciding a motion to dismiss for failure to  
20 exhaust, the Court will look beyond the pleadings and decide disputed  
21 issues of fact. Wyatt, 315 F.3d at 1119–20 (quoting Ritza, 837 F.2d at  
22 368). If the Court concludes that Plaintiff has not exhausted the  
23 administrative remedies, the unexhausted claims must be dismissed and  
24 the Court will grant the motion to dismiss. Wyatt, 315 F.3d at 1120. If all  
25 of the claims are unexhausted, the case will be dismissed, which means  
26 Plaintiff's case is over. If some of the claims are exhausted and some

1 are unexhausted, the unexhausted claims will be dismissed and the  
2 case will proceed forward only on the exhausted claims. Jones v. Bock,  
3 549 U.S. 199, 219–224 (2007). A dismissal for failure to exhaust is  
4 without prejudice. Wyatt, 315 F.3d at 1120.

- 5 4. If responding to Defendants' unenumerated 12(b) motion to dismiss for  
6 failure to exhaust the administrative remedies, Plaintiff may not simply  
7 rely on allegations in the complaint. Instead, Plaintiff must oppose the  
8 motion by setting forth specific facts in declaration(s) and/or by  
9 submitting other evidence regarding the exhaustion of administrative  
10 remedies. See Fed.R.Civ.P. 43(c); Ritza, 837 F.2d at 369. If Plaintiff  
11 does not submit his own evidence in opposition, the Court may conclude  
12 that Plaintiff has not exhausted the administrative remedies and the case  
13 will be dismissed in whole or in part.
- 14 5. Unsigned declarations will be stricken, and declarations not signed under  
15 penalty of perjury have no evidentiary value.
- 16 6. The failure of any party to comply with this order, the Federal Rules of  
17 Civil Procedure, or the Local Rules of the Eastern District of California  
18 may result in the imposition of sanctions including but not limited to  
19 dismissal of the action or entry of default.

20 **V. ORDER**

21 Accordingly, it is hereby ordered that:

- 22 1. Plaintiff's Urgent Motion to File Responsive Pleadings (ECF No. 43) is  
23 granted such that Plaintiff shall within twenty-one (21) days following  
24 service of this order file his response to Defendants' Motion to Dismiss.
- 25 2. Plaintiff shall file any necessary correction of his current address within  
26 twenty-one (21) days of service of this order.

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3. The Clerk is directed to serve this order on Plaintiff at the following addresses:

Richard Lawson  
26627 Shakespeare Lane  
Stevenson Ranch, CA 91381.

Richard Lawson  
CDC#D30022  
California Medical Facility  
P.O. Box 2500  
Vacaville, CA 95696-2500.

IT IS SO ORDERED.

Dated: October 4, 2012

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE