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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARNELL DUKES,

 Plaintiff,

 v.

GARCIA,

 Defendant.

Case No. 1:12-cv-00941 LJO DLB PC

ORDER REQUIRING DEFENDANT
TO FILE A RESPONSIVE PLEADING

TWENTY-ONE DAY DEADLINE

Plaintiff Darnell Dukes (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 19, 2014, the Ninth Circuit Court of Appeals remanded the action to this Court with instructions to vacate the judgment.

On September 12, 2014, the Court vacated the judgment and ordered Defendant to file a response to the complaint.

On October 15, 2014, Defendant filed a motion for summary judgment based on exhaustion. However, a motion for summary judgment is not a responsive pleading. Fed. R. Civ. Proc. 7; Educ. Servs., Inc. v. Maryland State Bd for Higher Educ., 710 F.2d 170, 176-77 (4th Cir. 1983)

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Accordingly, as Defendant has not filed a proper response to the complaint, Defendant is ORDERED to do so within twenty-one (21) days of the date of service of this order. Defendant's motion for summary judgment will remain pending.

IT IS SO ORDERED.

Dated: October 17, 2014

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE