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

CLIFTON JEROME MCDANIEL,

Plaintiff,

No. 2:07-cv-1189 JAM JFM P

vs.

S. HUBBARD, et al.,

Defendants.

ORDER

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On November 10, 2009, the court issued a briefing schedule on defendants' November 9, 2009 motion for judgment on the pleadings. On December 3, 2009, plaintiff filed a response to the briefing notice, objecting that defendants filed a motion for judgment on the pleadings rather than a motion to dismiss for failure to exhaust administrative remedies, claiming that defendants failed to serve a copy of the motion on plaintiff, and noting that he has been transferred and has no legal property at this time.

Defendants' motion contains a declaration of service by U.S. Mail declaring that a copy of the motion was served on plaintiff at the California Medical Facility by mail on November 9, 2009. Plaintiff did not indicate the date he was transferred from California Medical Facility, but the docket reflects he filed a change of address on November 16, 2009. The change of address was dated November 10, 2009.

1           Because it appears plaintiff did not receive the motion due to his transfer, the  
2 court will direct the Clerk of Court to provide plaintiff with a copy of the motion and plaintiff  
3 will be granted an additional thirty days in which to file an opposition to the motion. Plaintiff is  
4 cautioned that failure to file an opposition will result in a recommendation that the motion be  
5 granted.

6           Accordingly, IT IS HEREBY ORDERED that:

7           1. The Clerk of the Court is directed to send plaintiff a copy of the November 9,  
8 2009 motion for judgment on the pleadings; and

9           2. Plaintiff is granted an additional thirty days in which to file an opposition to  
10 the motion for judgment on the pleadings. Defendants' reply shall be filed seven days thereafter.

11 DATED: December 8, 2009.

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14 UNITED STATES MAGISTRATE JUDGE

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