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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **AT TACOMA**

10 JONATHAN W. MCKINNEY,

11 Plaintiff,

12 v.

13 JOHN MILLS,

14 Defendant.

NO. C08-5720 BHS/KLS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR CONTINUANCE TO  
FILE RESPONSE TO DEFENDANT'S  
MOTION TO DISMISS

15 Before the Court is Plaintiff's Motion for Extension of Time to Respond to  
16 Defendant's Rule 12(b) Motion to Dismiss. Dkt. 21. Defendant's motion to dismiss (Dkt. 13)  
17 is presently noted for July 31, 2008. Plaintiff requests an extension because of recent medical  
18 procedures and transfer to a new facility. Dkt. 21. Defendant has not filed a response in  
19 opposition to the request for an extension.

20 The Court finds that Plaintiff should be granted an extension of time to respond to the  
21 pending motion to dismiss. Plaintiff states that he will present "evidence and argument that  
22 will support a claim of physical injury caused in whole or in part by the assaultive conduct of  
23 Officer Mills." Dkt. 4, p. 6. However, he has not filed a motion to amend or provided an  
24 amended complaint for the Court's review. His response to the motion to dismiss is limited to  
25 those facts originally alleged in his complaint. Based on that response, the Court will  
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1 determine whether he shall be given an opportunity to amend his pleading in order to cure any  
2 deficiencies.

3 Accordingly, it is **ORDERED**:

4 (1) Plaintiff's motion for an extension of time (Dkt. 21) is **GRANTED**.


5 (2) Plaintiff may file his response to the motion to dismiss (Dkt. 13) on or before  
6 **September 11, 2009<sup>1</sup>**.

7 (3) Defendants' reply shall be due on or before **September 11, 2009**.

8 (4) The court clerk shall re-note the motion to dismiss (Dkt. 13) for the court's  
9 consideration for **September 11, 2009**.

10 (5) The Clerk is directed to send copies of this order to Plaintiff and counsel for  
11 Defendants.

12 **DATED** this 21st day of August, 2009.

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16 Karen L. Strombom  
17 United States Magistrate Judge

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23 <sup>1</sup>Plaintiff states that he is proceeding under the presumption that the court has  
24 rescheduled the hearing of this motion due to Defendant's inability to arrange telephonic  
25 participation of the Plaintiff. However, unless otherwise ordered by the court, all motions will  
26 be decided by the court without oral argument. Counsel shall not appear on the date the  
motion is noted unless directed by the court. If a request for oral argument is granted, the clerk  
will notify the parties of the date and time for argument. CR 7.