

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 07-cv-00663-LTB-KMT

MICHAEL WHITINGTON,

Plaintiff,

v.

LT. STEINBECK,  
CAPT. BUTLER and Limon's IWLP Supervisor,  
WARDEN ESTEP,  
CAPT. MICHAELS,  
THOMAS BULLARD,  
WILLIAM ZALMAN,  
JOE ORTIZ, in his individual capacity, and  
CHERYL SMITH,

Defendants.

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**ORDER**

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This case is before me on the recommendation of the Magistrate Judge that Defendants' Second Motion for Summary Judgment (Doc 112) be granted in part and that summary judgment be entered in favor of Defendants Zalman, Butler, Michaels, Smith, Ortiz, and Bullard as to all remaining claims. The Magistrate Judge further recommends that Defendants' Second Motion for Summary Judgment (Doc 112) be denied insofar as it seeks entry of summary judgment in favor of Defendant Estep on Claim Two of the Second Amended Prisoner Complaint. The Magistrate Judge finally recommends that Plaintiff's Motion for Preliminary Injunction (Doc 120) be denied.

The recommendation was issued and served on December 9, 2009. On December 21, 2009, Defendant Estep filed his objections to the Magistrate Judge's recommendation (Doc 138). On

December 29, 2009, Plaintiff filed his objections to the Magistrate Judge's recommendation (Doc 139). Plaintiff did not object to the recommendation as to Defendant Estep and has had no opportunity to respond to Defendant Estep's objections to the Magistrate Judge's recommendation. Defendants filed their response to the Plaintiff's objections (Doc 141) contending that Plaintiff's objections were not timely. I disagree and will therefore consider Plaintiff's objections.

In addition to objecting to the Magistrate Judge's recommendations on the merits, Plaintiff objects to her consideration of Defendants' Second Motion for Summary Judgment on procedural grounds. I discern no procedural or substantive error in her doing so.

As to all Defendants except Defendant Estep, I have reviewed the Magistrate Judge's recommendations *de novo* in light of Plaintiff's objections to them and these Defendants response. On *de novo* review, I conclude that the recommendations are correct.

As to Defendant Estep, Plaintiff should be afforded opportunity to respond to the specific objections by Defendant Estep to the Magistrate Judge's recommendation. Accordingly

IT IS ORDERED as follows:

1. Defendants' Second Motion for Summary Judgment (Doc 112) is GRANTED IN PART and summary judgment shall enter in favor of Defendants Zalman, Butler, Michaels, Smith, Ortiz, and Bullard as to all remaining claims;
2. Defendant Estep's Second Motion for Summary Judgment (Doc 112) is HELD IN ABEYANCE on Plaintiff's Claim Two against Defendant Estep of the Second Amended Prisoner Complaint;

3. Plaintiff shall file any response he may have to Defendant Estep's objection (Doc 138) to the Magistrate Judge's recommendation as to Defendant Estep **on or before February 12, 2010**; and
4. Plaintiff's Motion for Preliminary Injunction (Doc 120) is DENIED.

BY THE COURT:

s/Lewis T. Babcock  
Lewis T. Babcock, Judge

DATED: January 21, 2010