

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Chief Judge Wiley Y. Daniel**

Civil Action No. 09-cv-00824-WYD-KLM

RICHARD RAMOS,

Plaintiff,

v.

JIM KELLER,  
TASHA DOBBS,  
DUANE ROBINSON, and  
ROBERT ARMENTA,

Defendants.

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**ORDER AFFIRMING AND ADOPTING RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

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THIS MATTER is before the Court on Defendants' Motion to Dismiss or, in the Alternative, Motion for Summary Judgment filed August 20, 2009 [d/e 41]. This motion was referred to Magistrate Judge Kristen L. Mix for a recommendation by Order of Reference dated June 25, 2009. An Amended Recommendation of United States Magistrate Judge was issued on December 9, 2009, and is incorporated herein by reference.<sup>1</sup> See 28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b).

Magistrate Judge Mix recommends therein that Defendants' motion be granted and the case be dismissed against all Defendants pursuant to FED. R. CIV. P. 12(b)(6). Magistrate Judge Mix also recommends that the summary judgment be entered in favor of Defendants pursuant to FED. R. CIV. P. 56. Magistrate Judge Mix also advised the parties

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<sup>1</sup>The original Recommendation was issued on December 4, 2009 [d/e 53].

that specific written objections were due within ten (14) days after being served with a copy of the Recommendation. (Amended Rec., p. 17 [d/e 55]. Despite this advisement, no objections were filed by any party to the Magistrate Judge's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."<sup>2</sup> See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Mix that there was no violation of Plaintiff's constitutional rights, the pleadings are insufficient as to Defendant Armenta, that Defendants are entitled to qualified immunity, and summary judgment is appropriate for Plaintiff's failure to exhaust administrative remedies under the Prison Litigation Reform Act (42 U.S.C. § 1997e). Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated December 9, 2009, is **AFFIRMED and ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendants Motion to Dismiss or, in the Alternative,

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<sup>2</sup> Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, FED. R. CIV. P. 72(a), which in turn is less than a *de novo* review, FED. R. CIV. P. 72(b).

Motion for Summary Judgment filed August 20, 2009 [d/e 41] is **GRANTED** and the case is **DISMISSED** against all Defendant pursuant to FED. R. CIV. P. 12(b)(6). It is

FURTHER ORDERED that Defendants Motion to Dismiss or, in the Alternative, Motion for Summary Judgment filed August 20, 2009 [d/e 41] is also **GRANTED** to the extent it seeks summary judgment for failure to exhaust administrative remedies under the Prison Litigation Reform Act (42 U.S.C. § 1997e) and judgment be entered in favor of Defendants pursuant to FED. R. CIV. P. 56.

Dated: March 2, 2010

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Chief United States District Judge