

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-cv-02223-DME-KLM

ANTHONY LEE ARCHIBEQUE,

Plaintiff,

v.

COMMANDER JOHN DOE GLANZ,

Defendant.

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**ORDER**

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On September 11, 2009, Plaintiff Anthony Lee Archibeque filed a law suit under 42 U.S.C. §§ 1983 and 1985. Although Mr. Archibeque's Complaint raised multiple claims, only one now remains. The remaining claim challenges the conditions of his confinement in Weld County Jail, alleging that Defendant Commander John Doe Glanz retaliated against him and placed him in segregation in violation of his First and Fourteenth Amendment constitutional rights. Mr. Glanz filed a motion for summary judgment seeking dismissal of this claim on both procedural and substantive grounds. Mr. Archibeque responded with his own motion for summary judgment. Magistrate Judge Kristen L. Mix appropriately construed Mr. Archibeque's motion as an untimely response to Mr. Glanz's motion but considered it anyway. Magistrate Judge Mix then issued a Report & Recommendation in which she concluded that the Court should grant Mr. Glanz's motion for summary judgment on the ground that Mr. Archibeque failed to exhaust his administrative remedies; she recommended denying Mr. Archibeque's motion as moot.

Because neither party filed objections, this Court may, in its “considerable discretion,” review the Recommendation under “any standard it deems appropriate.” Summers v. Utah, 927 F.2d 1165, 1167-68 (10th Cir. 1991). The Court has reviewed the Recommendation for “clear error on the face of the record,” Strepka v. Sailors, 494 F.Supp. 2d 1209, 1215 (D. Colo. 2007), and it has found no such error. Moreover, the Court finds the Report & Recommendation persuasive and correct. Therefore, the Court adopts the Report & Recommendation in full.

Defendant’s Motion for Summary Judgment (Doc. 15) is GRANTED.

Plaintiff’s Motion for Summary Judgment (Doc. 18) is DENIED as moot.

Plaintiff’s Complaint (Doc. 3) is DISMISSED without prejudice for failure to exhaust his administrative remedies.

Dated this 25th day of August, 2010.

BY THE COURT:

*s/ David M. Ebel*

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U. S. CIRCUIT COURT JUDGE