

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

Civil Case No. 10-cv-02715-LTB-KLM

JEFFREY L. YARBERRY,

Plaintiff,

v.

TOM J. VILSACK, Secretary, US Department of Agriculture,

Defendant.

ORDER

On July 27, 2011, I entered my Order approving the Recommendation of the Magistrate Judge that the Motion to Dismiss by Defendant be granted and the Amended Complaint dismissed without prejudice. I further ordered that Plaintiff's Motion to Amend be denied (Doc 43). In that Order, I noted that the Plaintiff had not filed a timely reply to the response filed by Defendant. I now note that a reply was filed on July 27, 2011 (Doc 45) and thus constitutes substantial compliance with my Order setting filing dates. Unfortunately, in Plaintiff's reply, Plaintiff does not address his critical failure to raise before the Magistrate Judge an argument that he never received a Notice of Right to File a Formal Complaint and thus waived that question on review by me of the Magistrate Judge's Recommendations.

I note that Plaintiff has also filed a Motion to Compel Production of Document (Doc 44).

I conclude upon a review of Plaintiff's reply that the Order entered July 27, 2011 (Doc 43) remains correct.

IT IS THEREFORE ORDERED that the Order of July 27, 2011 (Doc 43) is the order of this Court.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Compel Production of Document (Doc 44) is DENIED AS MOOT.

BY THE COURT:

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

DATED: July 28, 2011