

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02532-REB-MEH

JANOS TOEVS,

Plaintiff,

v.

KEVIN MILYARD, in his official and individual capacities,
TOM CLEMENTS, in his official and individual capacities,
ARISTEDES ZAVARES, in his official and individual capacities,
CAPTAIN WHITNEY, in his official and individual capacities,
C.O. MERRILL, in his official and individual capacities,
C.O. RALSTON, in his official and individual capacities,
BERANDETTE SCOTT, in her official and individual capacities,
SGT. CHRISTIANS, in his official and individual capacities,

Defendants.

NOTICE OF CONVERSION TO SUMMARY JUDGMENT

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Defendant's Motion to Dismiss or Motion for Summary Judgment ("Motion"), alleging in part that Plaintiff fails to state a claim upon which relief may be granted because he failed to exhaust his administrative remedies [*see* docket #21]. Plaintiff timely filed a response to the motion and Defendants a reply brief. With the motion and response, the parties attached an affidavit and other documents in support of their positions with respect to whether Plaintiff exhausted his administrative remedies.

Because the parties wish to support their positions regarding the failure to exhaust argument with documents outside of the pleadings, it is proper to inform the parties that the Court will convert the Motion to Dismiss into a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 only with

respect to the failure to exhaust argument. *See David v. City & County of Denver*, 101 F.3d 1344, 1352 (10th Cir. 1996). Consequently, either party may submit any additional briefing regarding this argument, and in such additional briefing, the parties may respond to the materials already submitted with any “material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).

Therefore, it is ORDERED that any additional briefing by either party with respect to the failure to exhaust argument must be submitted on or before **July 23, 2013**.

Dated at Denver, Colorado, this 9th day of July, 2013.

BY THE COURT:

A handwritten signature in black ink that reads "Michael E. Hegarty". The signature is written in a cursive style with a large initial 'M' and 'H'.

Michael E. Hegarty
United States Magistrate Judge