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

Civil Case No. 13-cv-01815-LTB-CBS

MATTHEW ALAN SMITH,

Plaintiff,

v.

UNITED PARCEL SERVICE,

Defendant.

ORDER

This case is before me on the Recommendation of the Magistrate Judge that Defendant's Motion to Dismiss, or in the Alternative for Summary Judgment, be granted in part; that any allegations concerning conduct occurring prior to August 7, 2012 be dismissed without prejudice for lack of subject matter jurisdiction based on failure to exhaust administrative remedies, a jurisdictional prerequisite to suit; that the remaining allegations concerning conduct occurring after August 7, 2012 be dismissed without prejudice for failure to state a claim to which relief can be granted. The Magistrate Judge further recommends that Defendant's Second Motion to Dismiss be denied without prejudice in light of this recommendation; that Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment be granted in part; and that Plaintiff's Motion for Change of Venue be denied without prejudice in light of this recommendation; that Defendant's Motion to Dismiss, or in the Alternative, for Summary Judgment be granted in

part. The recommendation was issued and served on February 27, 2014.

The Plaintiff has filed three documents all entitled "Plaintiff's Notice of Magistrate Judges Recommendation and Venue Changes (Doc 44 - filed March 4, 2014; Doc 45 - filed March 4, 2014; Doc 171 - filed in Case No. 12-cv-01578 March 4, 2014). I construe these documents as specific objections to the Magistrate Judge's Recommendations.

The Defendant has filed its specific objections to the Magistrate Judge's Recommendation (Doc 46) supplemented by its Supplemental Objections (Doc 48). Defendant has also responded to the Plaintiff's "Notice of Magistrate Judges Recommendation and Venue Changes."

In light of these objections, I reviewed the Magistrate Judge's Recommendation *de novo*.

The Defendant agrees with the Magistrate Judge's Recommendation in part but objects and contends there are numerous reasons that dismissal be with prejudice. Each of the Defendant's contentions in this respect persuade me that the action must be dismissed with prejudice.

Accordingly,

IT IS ORDERED that the Magistrate Judge's Recommendation is approved in part but that it is disapproved in that the above action be DISMISSED WITH PREJUDICE.

BY THE COURT:

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

DATED: March 24, 2014