

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA**

JAMES VICTOR ORINGDERFF, JR.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. CIV-09-0677-F
	)	
(1) WILLIAM COOPER and (2) - (10)	)	
JOHN DOES,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff James Victor Oringderff, Jr., a state prisoner appearing with counsel, brings this action pursuant to 42 U.S.C. § 1983 alleging a violation of his federal constitutional rights. Defendant has filed a motion for summary judgment (doc. no. 10), arguing that this action should be dismissed for failure to exhaust administrative remedies.

Plaintiff has objected to certain recommendations in the March 25, 2010 Report and Recommendation of Magistrate Judge Valerie K. Couch. Specifically, plaintiff objects to the Magistrate Judge’s recommendation that this action be dismissed without prejudice for failure to exhaust administrative remedies. Plaintiff argues that Magistrate Judge Couch is “too dismissive” of the Tenth Circuit’s opinion in Whittington v. Ortiz, 472 F.3d 804 (10th Cir. 2007).

Plaintiff raises no objection to the other recommendation contained in the Report, which is that the John Doe defendants be dismissed without prejudice for lack of service of process under Rule 4(m), Fed. R. Civ. P., unless plaintiff, through his counsel of record, shows cause for an extension of time within which to obtain


service. No request for an extension has been made by plaintiff, and no cause has been shown for any extension.

As required by 28 U.S.C. §636(b)(1), the court has reviewed all objected to matters *de novo*. Having completed that review, the court finds that no purpose would be served by any additional analysis here, and that the Magistrate Judge's recommendation that this action be dismissed for failure to exhaust administrative remedies should be adopted.

The court has also reviewed the portions of the Report to which no objection has been made. Upon review, the court finds that no purpose would be served by any additional analysis of the service issue with respect to the John Doe defendants. The Magistrate Judge's recommendation that the John Doe defendants be dismissed for failure to serve, under Rule 4(m), should be adopted.

Accordingly, the court **ACCEPTS, ADOPTS** and **AFFIRMS** Magistrate Judge Couch's Report and Recommendation in its entirety. Defendant's motion for summary judgment is **GRANTED**. This action is **DISMISSED** without prejudice, for failure to exhaust administrative remedies. Additionally, the John Doe defendants are dismissed without prejudice under Rule 4(m), Fed. R. Civ. P., for lack of service.

Dated this 27<sup>th</sup> day of April, 2010.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE