

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Christine M. Arguello**

Civil Action No. 19-cv-02279-CMA-NRN

TERANCE D. WILSON,

Plaintiff,

v.

JOHNSON, LT.,
VAUGHN, C.O.,
WHITE, SGT.,
WILDA, LT.,
JORDAN, C.O.,
WILL, SGT.,
TOLENTINO, C.O.,
QUINLIN, LT.,
SUPPES, SGT.,
DONALD NUNEZ, MJR.,
BRENDON R. MARKHAM,
WEAVER, SGT.,
WINEGARDNER, LT.,
WOOD, CO., and
SILVIA VALDEZ-GONZALES,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE**

This matter is before the Court on the July 12, 2023 Report and Recommendation of United States Magistrate Judge (Doc. # 247), wherein Judge N. Reid Neureiter recommends that this Court grant Defendants' Motion for Summary Judgment for Failure to Exhaust Administrative Remedies Under the PLRA (Doc. # 212). The Court affirms and adopts the Recommendation for the following reasons.

“[T]he district court is accorded considerable discretion with respect to the treatment of unchallenged magistrate reports. In the absence of timely objection, the district court may review a magistrate [judge’s] report under any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (citing *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”)). The Recommendation advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (Doc. # 247 at 29–30.) Neither party has filed any objection, and the time to do so has now expired.

Having reviewed the Recommendation, the relevant portions of the record, and applicable legal authority, the Court is satisfied that the Recommendation is sound and not clearly erroneous or contrary to law.¹ See Fed. R. Civ. P. 72(a). Accordingly, the Court ORDERS as follows:

- The July 12, 2023 Recommendation of United States Magistrate Judge (Doc. # 247) is AFFIRMED and ADOPTED as an order of this Court;
- Defendants’ Motion for Summary Judgment for Failure to Exhaust Administrative Remedies under the PLRA (Doc. # 212) is GRANTED;

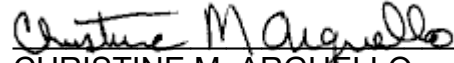
¹ Because Mr. Wilson proceeds *pro se*, the Court “review[s] his pleadings and other papers liberally and hold[s] them to a less stringent standard than those drafted by attorneys.” *Trackwell v. United States*, 472 F.3d 1242, 1243 (10th Cir. 2007). However, it is not “the proper function of the district court to assume the role of advocate for the pro se litigant.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

- Plaintiff's action is DISMISSED WITHOUT PREJUDICE.²

The Clerk of Court is directed to close this case.

DATED: August 3, 2023

BY THE COURT:


CHRISTINE M. ARGUELLO
Senior United States District Judge

² Dismissal for failure to exhaust administrative remedies under the PLRA is typically without prejudice. See *Fields v. Okla. State Penitentiary*, 511 F.3d 1109, 1113 (10th Cir. 2007). Under some circumstances, such as when any attempt to cure a procedural flaw would be untimely, courts have held that dismissal should be with prejudice. See *Duffy v. Daugherty*, No. CIV-09-908-D, 2010 WL 2079674, at *2 n.6 (W.D. Okla. Apr. 22, 2010) (collecting cases). Several courts in this district have clarified that a prerequisite to dismissal with prejudice is the prison authorities' rejection of a plaintiff's grievances as untimely. See, e.g., *Saleh v. Wiley*, No. 09-cv-02563-PAB-KLM, 2012 WL 4356221, at *11 n.2 (D. Colo. June 19, 2012); *Arocho v. Lappin*, No. 07-cv-02603-REB-KLM, 2011 WL 2292187, at *14 n.8 (D. Colo. Apr. 21, 2011). In this case, Defendants have not argued or demonstrated that any attempt by Plaintiff to exhaust his administrative remedies would be untimely. As such, the dismissal shall be without prejudice. See *Jones v. Bradshaw*, No. 19-cv-01092-MEH, 2019 WL 5549164, at *7 (D. Colo. Oct. 25, 2019).