

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ROBERT M. HOLTON,

Plaintiff,

vs.

VIRTUAL INVENTORIES, INC.,

Defendant.

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Case No. 10-2518 WEB

ORDER ADOPTING REPORT AND RECOMMENDATION

Now before the court is the review of the magistrate judge's report and recommendation pursuant to Rule 72 (a), Federal Rules of Civil Procedure. On September 23, 2010, Plaintiff filed a Motion to Proceed Without Payment of Fees (Doc. 2, sealed). The Report and Recommendation was filed on October 18, 2010. No objections have been filed.

Under 28 U.S.C. § 1915(a), a federal court may authorize commencement of an action without prepayment of fees, costs, etc., by a person who lacks financial means. In doing so, the court considers the affidavit of financial status included with the application. *See id.* There is a liberal policy toward permitting proceedings *in forma pauperis* when necessary to ensure that the courts are available to all citizens, not just those who can afford to pay. *See Yellen v. Cooper*, 82 F.2d 1471 (10th Cir. 1987). In construing the

application and affidavit, courts generally seek to compare an applicant's monthly expenses to monthly income. *See Patillo v. N. Am. Van. Lines, Inc.*, No. 02-2162, 2002 WL 1162684, at *1 (D.Kan. Apr. 15, 2002); *Webb v. Cessna Aircraft*, No. 00-2229, 2000 WL 1025575, at *1 (D.Kan. July 17, 2000).

After a thorough review of the information contained in Plaintiff's financial affidavit, the magistrate judge determined that the plaintiff's monthly income far exceeds his listed monthly expenses. The magistrate judge also noted that the plaintiff had a significant amount of cash on hand, as well as other assets listed by the plaintiff. The magistrate judge found that Plaintiff is more than capable of paying the requisite filing fee. The magistrate judge recommended that Plaintiff's Motion to Proceed Without Payment of Fees (Doc. 2, sealed) be denied.

The magistrate judge's report stated the applicable law that Plaintiff shall have ten days after service of a copy of the proposed findings and recommendations to serve and file his written objections to the findings of fact, conclusions of law, or recommendations of the magistrate judge. The Report and Recommendation was delivered to the Plaintiff via Certified Mail on October 22, 2010. Over two weeks have passed, and the Plaintiff has failed to file any objections. Plaintiff's failure to file such written, specific objections within the ten-day period bars appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

The record supports the magistrate judge's findings of fact and legal conclusions. Therefore, the Court ADOPTS the Report and Recommendation (Doc. 4), and DENIES the Plaintiff's Motion to Proceed Without Payment of Fees (Doc. 2, sealed).

SO ORDERED this 8th day of November, 2010 at Wichita, Kansas.

s/ Wesley E. Brown

Wesley E. Brown

U.S. Senior District Judge