

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WAYNE B. HERRMANN,)
)
 Plaintiff,)
)
 v.) Case No. 11-1123-RDR
)
 RAIN LINK, INC., et al.,)
)
 Defendants.)

O R D E R

This matter is presently before the court upon the Report and Recommendation of Magistrate Judge K. Gary Sebelius. The Report and Recommendation addresses the plaintiff's motion for spoliation sanctions. Judge Sebelius recommended that a portion of plaintiff's motion be denied. He recommended that plaintiff's requests for adverse-inference jury instructions, analogous inferences by the court in conjunction with summary judgment briefing, and attorney fees and additional monetary sanctions be denied. He further recommended that the remainder of the motion, which included requests for the admission and exclusion of evidence at trial, be denied without prejudice. He suggested that these issues should be addressed by the judge presiding over the trial of this case.

The parties have not filed objections to the Report and Recommendation, and the time for doing so has passed. See 28 U.S.C. § 636(b)(1). "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 court has reviewed the relevant pleadings concerning the Report and Recommendation. Based upon that review, the court finds that Judge Sebelius’ Report and Recommendation should be adopted in its entirety. Accordingly, the court hereby adopts Judge Sebelius’ Report and Recommendation, and plaintiff’s motion for spoliation sanctions shall be denied. The court shall deny plaintiff’s motion in so far as it seeks adverse-inference jury instructions and analogous inferences by the court in conjunction with summary judgment briefing, attorney fees, and other monetary sanctions. The court shall deny the remainder of plaintiff’s motion without prejudice. The court will decide the issues of the admission or exclusion of the spoliation evidence at the time of trial.

IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge K. Gary Sebelius (Doc. # 150) is hereby adopted.

IT IS FURTHER ORDERED that plaintiff’s motion for spoliation sanctions (Doc. # 125) be hereby denied as set forth in the foregoing order.

IT IS SO ORDERED.

Dated this 7th day of August, 2013, at Topeka, Kansas.

s/Richard D. Rogers
United States District Judge