

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**MARJORIE A. CREAMER,**

**Plaintiff,**

**v.**

**CITY OF TOPEKA, KANSAS, et al.,**

**Defendants.**

**Case No. 16-CV-2195-DDC-JPO**

**ORDER**

On March 29, 2016, Magistrate Judge James P. O’Hara issued a Report and Recommendation (Doc. 6), recommending dismissal of this lawsuit for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Judge O’Hara noted in his Report and Recommendation that plaintiff may serve and file objections to the Report and Recommendation under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, within 14 days after service. Doc. 6 at 5. He also advised plaintiff that failure to make a timely objection to the Report and Recommendation waives any right to appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. *See id.* (explaining that “[i]f no timely objections are filed, no appellate review will be allowed by any court.”). Judge O’Hara ordered the Clerk to send a copy of his Report and Recommendation to plaintiff by regular and certified mail. *Id.* A certified mail receipt, signed by plaintiff, was returned on April 11, 2016. Doc. 7.

Service of the Report and Recommendation was accomplished by “mailing it to [plaintiff’s] last known address—in which event service [was] complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C); *see also ReVoal v. Brownback*, No. 14-4076, 2014 WL 5321093, at \*1 (D. Kan. Oct. 16, 2014). That occurred on March 29, 2016, when the Clerk mailed the Report and

Recommendation to plaintiff. *See* Doc. 7. The time for plaintiff to file an objection to the Report and Recommendation thus has expired.<sup>1</sup>

To date, plaintiff has not filed an objection to the Report and Recommendation, nor has she sought any extension of time to file an objection. Because plaintiff has filed no objection to the Report and Recommendation within the time prescribed, and she has sought no extension of time to file an objection, the Court accepts, adopts, and affirms the Report and Recommendation in its entirety.

**IT IS THEREFORE ORDERED** that, after reviewing the file *de novo*, the Report and Recommendation issued by United States Magistrate Judge James P. O'Hara on March 29, 2016 (Doc. 6) is **ACCEPTED, ADOPTED and AFFIRMED**. The Court dismisses this action without prejudice under 28 U.S.C. § 1915(e)(2)(B)(ii).

**IT IS SO ORDERED.**

**Dated this 21st day of April, 2016, at Topeka, Kansas**

s/ Daniel D. Crabtree  
**Daniel D. Crabtree**  
**United States District Judge**

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<sup>1</sup> Plaintiff's deadline for responding is extended by three days because service was made by mail under Fed. R. Civ. P. 6(d). Even including these three additional days to the 14-day response time, the deadline for responding to Judge O'Hara's Report and Recommendation has expired.