

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

**IN RE  
PHYLLIS-JEANNINE HERLOCKER**

**Case No. 16-MC-214-CM-TJJ**

**MEMORANDUM AND ORDER**

On May 13, 2016, United States Magistrate Judge Gerald L. Rushfelt entered a Report and Recommendation (Doc. 3), recommending that this court dismiss this action without prejudice “for lack of subject matter jurisdiction and for lack of any complaint or other document that asserts any claim upon which the Court can provide relief.” (Doc 3, at 3.) Phyllis-Jeannine Herlocker, proceeding pro se, had until May 27, 2016 to file written objections to the Report and Recommendation pursuant to Rule 72(b)(2) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Ms. Herlocker did not file any objections. Generally, a failure to timely object to a Report and Recommendation precludes any appellate review of the disposition of the case or motion. *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005) (“This court has adopted a firm waiver rule under which a party who fails to make a timely objection to the magistrate judge’s findings and recommendations waives appellate review of both factual and legal questions.”).

The court has reviewed Judge Rushfelt’s Report and Recommendation and fully agrees with the analysis. Because Ms. Herlocker failed to timely object, and because the court agrees with Judge Rushfelt’s recommendation, the court finds that this action should be dismissed without prejudice. Any filing fee paid by Ms. Herlocker should be refunded to her.

**IT IS THEREFORE ORDERED** that the court adopts in full the Report and Recommendation of Judge Rushfelt (Doc. 3). This action is dismissed without prejudice. The clerk is directed to refund any filing fee paid by Ms. Herlocker.

Dated May 29, 2019, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
**United States District Judge**