

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BENJAMIN H. CUTSINGER,

Plaintiff,

v.

Case No. 6:17-cv-01020-JTM

CITY OF EL DORADO, KANSAS,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on a Report and Recommendation (Dkt. 4) by Magistrate Judge Gwynne E. Birzer. The Report recommends that plaintiff's motion to proceed *in forma pauperis* (Dkt. 3) be denied and that the action be dismissed.

The Report finds that the financial affidavit submitted by plaintiff in support of his application to proceed *in forma pauperis* is incomplete. Dkt. 4 at 2. It further finds that the allegations in plaintiff's complaint fail to show that this court has subject matter jurisdiction over his claims. *Id.* at 5-6. Even if jurisdiction were shown, the Report concludes that the complaint fails to state a plausible claim upon which relief could be granted. *Id.* As such, it recommends denial of the motion to proceed IFP and dismissal of the complaint for lack of jurisdiction or for failure to state a claim for relief.

The Report, which was filed on March 10, 2017, was electronically served upon plaintiff at the email address he provided to the court. Dkt. 4 at 7. It notified plaintiff that he had 14 days to file any written objections to the Report, and that a failure to timely object waives any right to review. *Id.*

Plaintiff has not filed any objections to the Report and the time for doing so has expired. The court accordingly finds that plaintiff has waived any right to object or for appellate review of the Report and Recommendation. Additionally, the court finds that the Report is both factually and legally correct.

IT IS THEREFORE ORDERED this 7th day of April, 2017, that the Report and Recommendation is adopted. Plaintiff's Motion to Proceed In Forma Pauperis (Dkt. 3) is DENIED, and the action is hereby DISMISSED WITHOUT PREJUDICE for lack of subject matter jurisdiction.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE