

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

KRYSTAL MARSHALL and
MILTON DAVISON,

Plaintiffs,

v.

Case No. 17-1090-JTM-KGG

BREAKING BENJAMIN, *et al.*,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court upon the Report and Recommendation filed by Magistrate Judge Kenneth G. Gale on May 23, 2017 (Dkt. 6). Judge Gale granted the plaintiffs', Krystal Marshall and Milton Davison, motion for *in forma pauperis* status and recommended that plaintiffs' claims against defendants Correctional Care Solutions, Brian D. Caplan, and "Kansas Association Employee Lauree" be dismissed. *Id.*, at 8. Because a motion to dismiss these defendants for failure to state a claim is a dispositive motion, this court reviews Judge Gale's Report and Recommendation *de novo*. Fed. R. Civ. P. 72(b)(3). When an objection to a magistrate judge's report and recommendation on a dispositive motion is not timely filed, the district court need only satisfy itself that there is no clear error on the face of the record in order to accept the magistrate judge's recommendation. Fed. R. Civ. P. 72 note (2017).

Plaintiffs have 14 days to file an objection to a magistrate judge's report and recommendation. D. Kan. R. 72.1.4, Fed. R. Civ. P. 72(b)(2). The plaintiffs received a copy of the Report and Recommendation on May 25, 2017 (Dkt. 7, 8). Plaintiffs filed a motion to amend their complaint on June 6, 2017, removing defendants Correctional Care Solutions, Brian D. Caplan, and "Kansas Association Employees Lauree" from the complaint. (Dkt. 9). The motion did not contain an objection to the Report and Recommendation. *Id.* Thus, the plaintiffs did not

timely object to Judge Gale's Report and Recommendation that these defendants be dismissed for failure to state a viable federal cause of action. This court is also satisfied that there is no clear error on the face of the record. Therefore, this court adopts Judge Gale's Report and Recommendation.

IT IS THEREFORE ORDERED that Judge Gale's Report and Recommendation (Dkt. 6) is adopted. Plaintiffs' Complaint against defendants Correctional Care Solutions, Brian D. Caplan, and "Kansas Association Employees Lauree" is DISMISSED for failure to state a claim upon which relief may be granted.

IT IS SO ORDERED on June 28, 2017.

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