

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

THADDEUS JONES,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 17-3089-EFM-KGG
)	
JEFF EASTER, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**MEMORANDUM & ORDER
GRANTING MOTION FOR CLARIFICATION**

Now before the Court is Plaintiff’s Motion for Clarification (Doc. 95) regarding this Court’s prior Report & Recommendation to the District Court on Plaintiff’s “Motion to Compel Compliance with Court’s Previous Order Compelling Discovery and Renewed Request for Sanctions and Clarification” (Doc. 60), filed *pro se*.¹ The Court incorporates by reference is prior Report & Recommendation and the findings therein.

This Court previously **recommended** to the District Court that, as an appropriate sanction for Defendant’s discovery abuses, the District Court include the following instruction to the jury at trial of this matter:

¹ The Court notes that the District Court has already granted the portion of this motion requesting an extension of time to respond to the Motion for Summary Judgment. (*See* Doc. 96, text entry.)

Prior to the trial of this matter, the parties engaged in discovery. The discovery process is an opportunity for parties to a lawsuit to request information and documents from each other and to provide evidence for trial. During the discovery process, the Defendants evaded providing proper responses to requests for information from Mr. Jones. The evasive responses continued even after the Defendants were ordered by the Court to provide proper responses and complete information. In deciding this case, you may consider whether this pretrial conduct of the Defendants indicates that the Defendants were trying to hide evidence which would be favorable to Plaintiff.

(Doc. 85, at 3). The Court reached this conclusion on the mistaken presumption that trial would be to a jury. As Plaintiff correctly states in the present motion, however, trial in this matter will be to the District Court, not to a jury. Plaintiff is also correct that during the Pretrial Conference the undersigned Magistrate Judge informed Plaintiff that the discovery material at issue and the recommended negative inference could be raised by Plaintiff during summary judgment proceedings.

Thus, the undersigned Magistrate issues the following clarification and correction to its prior Report & Recommendation: The Court **RECOMMENDS** to the District Court that the above-referenced negative inference, initially proposed as a jury instruction, instead be considered by the District Court in its deliberations relating to summary judgment and bench trial, if the case so proceeds.

IT IS THEREFORE ORDERED that a copy of the recommendation shall be sent to Plaintiff via certified mail and to Defendant electronically. Pursuant to 28 U.S.C. §636(b)(1), Fed.R.Civ.P. 72, and D.Kan. Rule 72.1.4, the parties shall have fourteen (14) days after service of a copy of these proposed findings and recommendations to serve and file with the U.S. District Judge assigned to the case, any written objections to the findings of fact, conclusions of law, or recommendations of the undersigned Magistrate Judge. A failure by the parties to file such written, specific objections within the 14-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition.

IT IS SO RECOMMENDED.

Dated this 15th day of October, 2019, at Wichita, Kansas.

S/ KENNETH G. GALE

HON. KENNETH G. GALE
U.S. MAGISTRATE JUDGE