

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

AARON J. HECHT,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

Case No. 17-4118-DDC-TJJ

MEMORANDUM AND ORDER

On December 21, 2017, plaintiff Aaron J. Hecht filed his Complaint in this action against the Internal Revenue Service (Doc. 1). That same day, plaintiff filed a Motion for Leave to Proceed *in forma pauperis* (Doc. 3). On January 5, 2018, Magistrate Judge Teresa J. James issued a Report and Recommendation (Doc. 4), recommending denial of plaintiff's Motion for Leave to Proceed *in forma pauperis*. Judge James concluded that plaintiff failed to show a financial inability to pay the required filing fee. For that reason, she recommended that the court: (1) require plaintiff to "prepay the full filing fee of \$400 within 30 days in order for this action to proceed" and (2) caution plaintiff, "failure to pay the filing fee by that time will result in the dismissal of this action without prejudice." Doc. 4 at 2.

As Judge James explained in her Report and Recommendation, plaintiff had the right to file objections to the Report and Recommendation under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(2) within 14 days after service. Doc. 4 at 1. She also advised plaintiff that failing to make a timely objection to the Report and Recommendation would waive any right to appellate review. *Id.* On January 5, 2018, the Clerk sent a copy of the Report and Recommendation to plaintiff by regular mail (Docket Entry for Doc. 4), thus completing service

of the Report and Recommendation. *See* Fed. R. Civ. P. 5(b)(2)(C) (providing that the court may accomplish service by mailing the Report and Recommendation “to [plaintiff’s] last known address—in which event service [was] complete upon mailing”); *accord ReVoal v. Brownback*, No. 14-4076, 2014 WL 5321093, at *1 (D. Kan. Oct. 16, 2014). Plaintiff’s written objections to the Report and Recommendation were due by January 19, 2018. That deadline has passed and yet, plaintiff has not filed an objection.

If an aggrieved party objects to the magistrate judge’s report and recommendation, the district judge assigned to the case “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). But when a plaintiff has not objected to a Report and Recommendation properly, the court has “considerable discretion” to review the recommendation under “any standard it deems appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991). After reviewing plaintiff’s Affidavit of Financial Status and Judge James’s Report and Recommendation, the court agrees with Judge James’s recommendation in its entirety. Plaintiff’s combined monthly income is \$8,813.33 and his monthly expenses are \$4,450.00. His monthly income nearly doubles his monthly expenses, providing sufficient financial resources to pay the filing fee. The court thus accepts, affirms, and adopts Judge James’s Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED BY THE COURT THAT the court accepts, adopts, and affirms Judge James’s Report and Recommendation (Doc. 4) in its entirety. Plaintiff must prepay the full filing fee of \$400 within 30 days of this order for this action to proceed. If

plaintiff fails to pay the filing fee by that time, the court will dismiss this action without prejudice.

IT IS SO ORDERED.

Dated this 29th day of January, 2018, at Topeka, Kansas.

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