

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

**DARLENE D. WINN,**

**Plaintiff,**

**v.**

**LAKEVIEW VILLAGE,**

**Defendant.**

**Case No. 18-2131-DDC-JPO**

**MEMORANDUM AND ORDER**

On March 27, 2018, Judge O’Hara issued a Report and Recommendation, recommending that the district court: (1) deny plaintiff’s Motion for Leave to Proceed In Forma Pauperis (Doc. 3); (2) permit plaintiff to pay the requisite filing fee in three equal monthly installments; and (3) caution plaintiff that if she does not pay the filing fee, the court will dismiss her case without prejudice. Doc. 4 at 3. As Judge O’Hara’s Report and Recommendation explained, 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(a), within 14 days after service. Doc. 4 at 3. Judge O’Hara also advised plaintiff that failing to make a timely objection to the Report and Recommendation would waive any right to appellate review of the proposed findings of fact, conclusions of law, and recommended disposition. *See id.* (explaining that “[i]f plaintiff does not timely file her objections, no court will allow appellate review”). The Clerk sent a copy of the Report and Recommendation to plaintiff by regular mail. *See* Docket Entry for Doc. 4 (“Mailed to pro se party Darlene D. Winn by regular mail.”).

Service of the Report and Recommendation was accomplished by “mailing it to [plaintiff’s] last known address—in which event service [was] complete upon mailing.” Fed. R.

Civ. P. 5(b)(2)(C); *ReVoal v. Brownback*, No. 14-4076, 2014 WL 5321093, at \*1 (D. Kan. Oct. 16, 2014). “Mailing” occurred on March 27, 2018, when the Clerk mailed the Report and Recommendation to plaintiff. *See* Doc. 4. The time for plaintiff to file objections to the Report and Recommendation thus expired April 10, 2018.

To date, plaintiff has filed no objection to Judge O’Hara’s Report and Recommendation, nor has she sought an extension of time to file an objection. Because plaintiff has filed no objection to the Report and Recommendation within the time prescribed, and she has sought no extension of time to file an objection, the court can accept, adopt, and affirm the Report and Recommendation in its entirety. *See Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991) (“In the absence of timely objection, the district court may review a magistrate’s report under any standard it deems appropriate.”).

The court also has reviewed plaintiff’s Motion for Leave to Proceed In Forma Pauperis and her accompanying Affidavit of Financial Status (Docs. 3, 3-1). And the court agrees with Judge O’Hara’s recommendation. Plaintiff’s filing demonstrates that she has sufficient financial resources to pay the filing fee. The court thus adopts Judge O’Hara’s recommendation that the district court deny plaintiff’s Motion for Leave to Proceed In Forma Pauperis and orders plaintiff to pay the \$400 filing fee in three equal monthly installments. The court cautions plaintiff: Failing to pay the filing fee may result in dismissal of her action without prejudice. *See, e.g., Cosby v. Meadors*, 351 F.3d 1324, 1331–33 (10th Cir. 2003) (affirming a district court’s order dismissing a plaintiff’s complaint for failing to pay the filing fee).

**IT IS THEREFORE ORDERED** that, after reviewing the file *de novo*, the Report and Recommendation issued by United States Magistrate Judge James P. O’Hara on March 27, 2018 (Doc. 4) is **ACCEPTED, ADOPTED, and AFFIRMED**.

**IT IS FURTHER ORDERED THAT** plaintiff's Motion for Leave to Proceed in Forma Pauperis (Doc. 3) is **DENIED**. The court orders plaintiff to pay the \$400 filing fee in three equal monthly installments. **The court cautions plaintiff that failure to pay the first installment of the filing fee within 30 days of the date of this Order will result in the dismissal of this action without prejudice.**

**IT IS SO ORDERED.**

**Dated this 20th day of April, 2018, at Topeka, Kansas.**

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