

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

CHRISTOPHER NEAL JAMES,

Plaintiff,

v.

U.S. COAST GUARD, et al.,

Defendants.

Case No. 18-4063-DDC-KGS

MEMORANDUM AND ORDER

On July 13, 2018, Magistrate Judge K. Gary Sebelius issued a Report and Recommendation, recommending that the district court: (1) deny plaintiff’s Motion for Leave to Proceed In Forma Pauperis (Doc. 3), and (2) order plaintiff to pay the \$400 filing fee within 14 days from the date the district judge issues a ruling on the Report and Recommendation. Doc. 5 at 2. As Judge Sebelius’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 of the Order. Doc. 5 at 2–3. Judge Sebelius 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.* at 3 (explaining that “[i]f no objections are timely filed, no appellate review will be allowed by any court.”). The Clerk sent a copy of the Report and Recommendation to plaintiff by regular mail and certified mail. *See* Docket Entry for Doc. 5. A certified mail receipt was returned showing delivery was made on July 16, 2018. Doc. 6.

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 July 13, 2018, when the Clerk mailed the Report and Recommendation to plaintiff. *See* Doc. 5. The time for plaintiff to file objections to the Report and Recommendation thus expired July 27, 2018.

To date, plaintiff has filed no objection to Judge Sebelius’s Report and Recommendation, nor has he sought to extend the time to file an objection. Because plaintiff has filed no objection to the Report and Recommendation within the time prescribed, and he 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 his accompanying Affidavit of Financial Status (Docs. 3, 4). And the court agrees with Judge Sebelius’s recommendation. Plaintiff’s filing demonstrates that he has sufficient financial resources to pay the filing fee. The court thus adopts Judge Sebelius’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 within 14 days of the date of this Order. The court cautions plaintiff: Failing to pay the filing fee may result in dismissal of his 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 K. Gary Sebelius on July 13, 2018 (Doc. 5) 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 within 14 days of the date of this Order. **The court cautions plaintiff that failure to pay the filing fee within 14 days of the date of this Order will result in the dismissal of this action without prejudice.**

IT IS FURTHER ORDERED THAT the Clerk of the Court shall mail a copy of this Order to plaintiff by regular and certified mail.

IT IS SO ORDERED.

Dated this 31st day of July, 2018, at Topeka, Kansas.

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