

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

JOSEPH H. SCHROEDER,

Plaintiff,

v.

JENNA GALLEGOS,

Defendant.

Case No. 20-1036-JAR-GEB

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Report and Recommendation filed on April 13, 2020 (Doc. 6). Fourteen days having passed, and no written objections being filed to the proposed findings and recommendations by Magistrate Judge Gwynne E. Birzer, and after a de novo determination upon the record pursuant to Fed. R. Civ. P. 72(b), the Court accepts the recommended decision and adopts it as its own, with one exception: it declines to impose filing restrictions against Plaintiff at this time. Under 28 U.S.C. § 1651, this Court has the authority to enjoin a litigant who abuses the court system through vexatious and harassing litigation.¹ Although Plaintiff has a lengthy history of filing unsuccessful *pro se* litigation against various business entities in the District of Kansas—and by contrast, the instant and eighth lawsuit is of an extremely personal nature—there is no evidence his litigation has been abusive, vexatious, harassing, or duplicative such that filing restrictions are warranted at this time.² Should Plaintiff persist with litigation of this nature against Ms. Gallegos, however, the Court will revisit its decision.

¹*See, e.g., Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989).

²*Id.* at 353–54; *Zhu v. Fed. Hous. Fin. Bd.*, No. 04-2539-KHV, 2007 WL 1266887, at *3 (D. Kan. May 1, 2007).

IT IS THEREFORE ORDERED BY THE COURT that in accordance with the April 13, 2020 Report and Recommendation (Doc. 6), this case is hereby **dismissed** for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(h)(3) and as frivolous under 28 U.S.C. § 1915(e)(2)(B)(i); in light of this dismissal, Plaintiff's Motion for Pre-Trial Mediation (Doc. 4) is **denied as moot**.

IT IS FURTHER ORDERED that the Court declines to impose filing restrictions against Plaintiff at this time.

IT IS SO ORDERED.

Dated: April 30, 2020

S/ Julie A. Robinson
JULIE A. ROBINSON
CHIEF UNITED STATES DISTRICT JUDGE