

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

NATALIE MITCHEM,

Plaintiff,

v.

SLEEPCAIR, INC.,

Defendant.

Case No. 20-2627-DDC-GEB

MEMORANDUM AND ORDER

On March 16, 2021, United States Magistrate Judge Birzer issued a Report and Recommendation, recommending that the district court: (1) deny plaintiff's Motion for Leave to Proceed In Forma Pauperis (Doc. 2), and (2) order plaintiff to pay the \$402 filing fee in three monthly payments of \$134. Doc. 12 at 4. As Judge Birzer'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(b)(2), within 14 days after service of the Order. Doc. 12 at 1. Judge Birzer also advised that plaintiff must file an objection within 14 days if she wishes to seek appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. *Id.*

The Clerk filed the Report and Recommendation on CM/ECF on March 16, 2021. Doc. 12. Plaintiff is represented by counsel registered in the District of Kansas, so, service of the Report and Recommendation occurred March 16, 2021. *See* D. Kan. R. 5.4.9(a) ("The notice of electronic filing automatically generated by the court's Electronic Filing System constitutes service of the filed document on all parties who have consented to electronic service"). Plaintiff had until March 30, 2021, to file an objection. *See* Fed. R. Civ. P. 6(a)(1) (defining how to

compute time stated in days). The time for plaintiff to file objections to the Report and Recommendation has expired.

To date, plaintiff has filed no objection to Judge Birzer'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 to Proceed Without Prepayment of Fees (Doc. 2). And, the court agrees with Judge Birzer's recommendation. Plaintiff's filing demonstrates that she has sufficient financial resources to pay the filing fee in three monthly installments. The court thus adopts Judge Birzer's recommendation that the district court deny plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. 2) and orders plaintiff to pay the \$402 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 Birzer on March 16, 2021 (Doc. 12) is **ACCEPTED, ADOPTED, and AFFIRMED**.

IT IS FURTHER ORDERED THAT plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. 2) is **DENIED**. The court orders plaintiff to pay the \$402 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 5th day of April, 2021, at Kansas City, Kansas.

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