

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

ANNETTE BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 21-2479-JAR
	)	
STATE OF KANSAS, et al.	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION**

The pro se plaintiff, Annette Brown, has moved to proceed with this action in forma pauperis (“IFP application”) (ECF No. 3). In an order entered October 21, 2021, the undersigned U.S. Magistrate Judge, James P. O’Hara, explained that information missing from plaintiff’s form financial affidavit submitted in support of her IFP application prevented the court from making an informed decision about whether the waiver of court costs and fees is justified.<sup>1</sup> The undersigned ordered plaintiff to file a supplemental financial affidavit, which she did.<sup>2</sup> But the supplemental affidavit did not clarify plaintiff’s financial situation, so the undersigned directed her to file a second supplemental financial affidavit by November 12, 2021, if she continued to seek leave to proceed IFP.<sup>3</sup> The

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<sup>1</sup> ECF No. 7.

<sup>2</sup> ECF No. 9

<sup>3</sup> ECF No. 11 at 2.

deadline has passed, and plaintiff has not filed a supplemental financial affidavit that would support granting her IFP application.

Accordingly, pursuant to *Lister v. Dept. of Treasury*,<sup>4</sup> the undersigned hereby issues this report and recommendation to the presiding U.S. District Judge, Julie A. Robinson, that plaintiff's IFP application be denied and that plaintiff be permitted to pay the requisite filing fee in three equal monthly installments. If plaintiff does not pay the fee, the undersigned recommends that this case be dismissed without prejudice.<sup>5</sup>

Plaintiff is hereby informed that, within 14 days after she is served with a copy of this report and recommendation, she may, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, file written objections to the report and recommendation. Plaintiff must file any objections within the 14-day period allowed if she wants to have appellate review of the proposed findings of fact, conclusions of law, or the recommended disposition. If plaintiff does not timely file her objections, no court will allow appellate review.

IT IS SO ORDERED.

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<sup>4</sup>408 F.3d 1309, 1312 (10th Cir. 2005) (holding that because denial of *in forma pauperis* is a dispositive decision, the magistrate judge should issue a report and recommendation to the district judge rather than deciding the issue outright).

<sup>5</sup> See *Akers v. Flannigan*, No. 20-3225-HLT, 2020 WL 6742788, at \*2 (D. Kan. Nov. 17, 2020) (“And because the deadline for Plaintiff to submit the filing fee has passed and no filing fee has been submitted, this action must be dismissed without prejudice for failure to pay the filing fee.”); *Holt v. Norwood*, No. 18-3284-SAC, 2020 WL 9171198, at \*1 (D. Kan. Jan. 27, 2020) (citing *Young*, 316 F. App’x at 771); *Lynn v. Price*, No. 19-3125-DDC, 2019 WL 4670210, at \*2 (D. Kan. Sept. 25, 2019) (“Plaintiff has failed to submit the required filing fee by the court’s deadline. As a consequence, the court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.”).

November 15, 2021, at Kansas City, Kansas.

s/ James P. O'Hara  
James P. O'Hara  
U. S. Magistrate Judge