

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

ANTHONY AZZARETTO,

Plaintiff,

v.

LEELIN TAYAG HARRINGTON,

Defendant.

Case No. 22-1080-DDC-KGG

MEMORANDUM AND ORDER

On June 6, 2022, Magistrate Judge Kenneth G. Gale issued an Order to Show Cause to plaintiff. Doc. 20. Specifically, Judge Gale ordered plaintiff to show cause, by June 21, 2022, why the court shouldn't dismiss this case, without prejudice, for lack of prosecution under Fed. R. Civ. P. 41(b). *Id.* at 2. Plaintiff never has responded to the Order to Show Cause. Plaintiff's counsel communicated informally with Judge Gale's chambers by email, seeking an extension of the deadline to respond to the Order to Show Cause. Judge Gale granted that informal request, extending the deadline to July 19, 2022. Doc. 21. But still, plaintiff never responded to the Order to Show Cause.

So, on July 20, 2022, Judge Gale issued a Report and Recommendation, recommending that the district court dismiss this lawsuit, without prejudice, under Fed. R. Civ. P. 41(b) for plaintiff's failure to prosecute. Doc. 22. Judge Gale noted in his Report and Recommendation that plaintiff may serve and file objections to the Report and Recommendation under 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72, and D. Kan. Rule 72.1.4, within 14 days after service of the Report and Recommendation. Doc. 22 at 3. Also, Judge Gale advised plaintiff that failing to make a timely objection to the Report and Recommendation waives any right to appellate review of the

proposed findings of fact, conclusions of law, or recommended disposition. *See id.* (explaining that “Plaintiff’s failure to file such written, specific objections within the fourteen-day period will bar appellate review of the proposed findings of fact, conclusions of law, and the recommended disposition”). The Clerk of the Court sent a copy of the Report and Recommendation to plaintiff’s counsel by regular mail and email. *See* July 20, 2022 Docket Entry (reciting that the Report and Recommendations was “[m]ailed to Plaintiff’s attorney from Texas state court proceedings Stephen W. Davis by regular mail and via email transmission”).

The 14-day time period for plaintiff to file objections to the Report and Recommendation expired on August 2, 2022. To date, plaintiff has filed no objection to Judge Gale’s Report and Recommendation, nor has he asked 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.”).

Also, the court has reviewed Judge Gale’s Report and Recommendation. And the court agrees with its conclusions. Plaintiff “continually failed to respond to the Court’s Order to Show Cause in the time required[.]” despite “various communication [initiated] by Court personnel and numerous extensions[.]” Doc. 22 at 3. And, plaintiff never has responded to Judge Gale’s Report and Recommendation. Thus, the court agrees. Plaintiff has failed to prosecute this case. And, it dismisses plaintiff’s lawsuit, without prejudice, for failing to prosecute under Fed. R. Civ. P. 41(b).

IT IS THEREFORE ORDERED THAT, after reviewing the file *de novo*, the Report and Recommendation issued by United States Magistrate Judge Kenneth G. Gale on July 20, 2022, (Doc. 22) is **ACCEPTED, ADOPTED, and AFFIRMED**. The court dismisses this action without prejudice under Fed. R. Civ. P. 41(b), for failing to prosecute.

IT IS SO ORDERED.

Dated this 12th day of August, 2022, at Kansas City, Kansas.

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