

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

**BRIAN A. NAMBO,**

**Plaintiff,**

**v.**

**WICHITA, CITY OF,**

**Defendant.**

**Case No. 6:22-cv-01153-HLT-GEB**

**ORDER**

This matter is before the Court on a Report and Recommendation (“R&R”) by Magistrate Judge Birzer that the case brought by Plaintiff Brian Nambo<sup>1</sup> be dismissed. Doc. 6. Judge Birzer screened Plaintiff’s case under 28 U.S.C. § 1915(e)(2)(B)(ii), which permits dismissal of an in forma pauperis case if a court determines that the action fails to state a claim, and recommended that the case be dismissed for failure to state a claim.

The R&R informed Plaintiff that he had 14 days after being served with the R&R to file an objection and that “[f]ailure to make a timely objection waives appellate review of both factual and legal questions.” *Id.* at 7-8. The R&R was sent to Plaintiff by certified mail and the certified mail receipt shows it was received on July 25, 2022. *See* Doc. 9. The Court later received correspondence from Plaintiff’s relative stating that Plaintiff had health issues. Doc. 10. The Court extended the time for Plaintiff to respond to the R&R until August 22, 2022. Doc. 11.<sup>2</sup> That

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<sup>1</sup> Because Plaintiff proceeds pro se, his pleadings are construed liberally and held to a less stringent standard than pleadings drafted by lawyers, but the Court does not assume the role of advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>2</sup> Plaintiff received that order by at least August 4, 2022. Doc. 12.

deadline has passed, and no objection has been filed, nor have any additional extensions been sought.

Because Plaintiff has not filed written objections to the R&R, he has waived his right to de novo review. *See In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199-1200 (10th Cir. 2000). In the absence of an objection, the Court may review an R&R under any standard it deems appropriate. *Summers v. State of Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991).

Plaintiff's complaint includes the following statement of his claim: "Case # 22CO38243 made with Wichita Police Department. Improper investigation techniques Applied. Original report made 6/23/22, No safety was offered, putting me in danger." Doc. 1 at 3. He additionally states that "a police report was made, I was in fear for my life & well being, my 'protector'(WPD) failed in doing so." *Id.* at 5. For relief, he seeks that "[proper] investigation Techniques [sic] to be instilled upon the W.P.D.," "[proper] protection for people whom make reports," and for the officers involved to be fired or resign. *Id.* at 4. He also seeks monetary damages for stolen items and \$1,000,000 in punitive damages for pain and suffering. *Id.* Plaintiff cites 28 U.S.C. § 1343(a)(1), 42 U.S.C. § 1985, and an American Law Reports provision. *Id.* at 3.

Applying the standard under Federal Rule of Civil Procedure 12(b)(6), Magistrate Judge Birzer considered the limited factual allegations in the complaint and considered whether Plaintiff stated a claim under § 1985.<sup>3</sup> Magistrate Judge Birzer considered each subsection of § 1985 and concluded that Plaintiff's complaint failed to plead sufficient facts to state a plausible claim for relief under § 1985.

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<sup>3</sup> Magistrate Judge Birzer noted that 28 U.S.C. § 1343 is a jurisdictional statute, and that American Law Reports are not statutes, but rather a database of legal authorities. Doc. 6 at 3.

The undersigned agrees with Magistrate Judge Birzer's analysis. Section 1985 applies to conspiracies to interfere with civil rights. But Plaintiff's complaint does not include any allegations of a conspiracy at all, let alone one to deprive him of civil rights. Nor do Plaintiff's facts state a plausible claim under any of the § 1985 subsections.

THE COURT THEREFORE ORDERS that Magistrate Judge Birzer's R&R (Doc. 6) is ADOPTED as the order of this Court.

THE COURT FURTHER ORDERS that Plaintiff's case is DISMISSED WITHOUT PREJUDICE for failure to state a claim. This case is closed.

IT IS SO ORDERED.

Dated: August 29, 2022

/s/ Holly L. Teeter  
HOLLY L. TEETER  
UNITED STATES DISTRICT JUDGE