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

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|-----------------------|---|------------------------|
| ANTHONY LEWIS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 08-2458-JAR |
| |) | |
| SPRINT NEXTEL, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff Anthony Lewis’s Motion for District Court Review and to Overturn Magistrate Court Decision (Doc. 17). Plaintiff objects to the December 5, 2008 Order issued by Magistrate Judge O’Hara granting defendant Sprint Nextel leave to file its responsive pleading to plaintiff’s complaint out of time, after finding defendant’s failure to do so was excusable neglect.¹ Judge O’Hara also denied plaintiff’s motion for default judgment.²

Fed. R. Civ. P. 72(b) allows a party to provide specific, written objections to the magistrate judge’s order. The rule states that “[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.”³ With respect to a magistrate judge’s order relating to nondispositive pretrial matters, the district court does not conduct a *de novo* review; rather, the court applies a more deferential standard by which the moving party must show that the magistrate judge’s

¹(Doc. 13.)

²*Id.*

³Fed. R. Civ. P. 72(b).

order is “clearly erroneous or contrary to the law.”⁴ “The clearly erroneous standard applies to factual findings, and ‘requires that the reviewing court affirm unless it “on the entire evidence is left with the definite and firm conviction that a mistake has been committed.”’⁵

The December 5, 2008 Order granting defendant leave to file its responsive pleading out of time addressed nondispositive pretrial matters in this case. After reviewing Judge O’Hara’s Order as well as plaintiff’s objections, the Court finds that Judge O’Hara’s decision is not clearly erroneous or contrary to law. Therefore, the Court overrules and denies plaintiff’s objection to this Order.

IT IS THEREFORE ORDERED BY THE COURT that plaintiff’s Motion for District Court Review and to Overturn Magistrate Court Decision (Doc. 17) is **OVERRULED** and **DENIED**.

IT IS SO ORDERED.

Dated: December 15, 2008

S/ Julie A. Robinson

JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

⁴*First Union Mortgage Corp. v. Smith*, 229 F.3d 992, 995 (10th Cir. 2000) (quoting *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1461-62 (10th Cir. 1988); 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a)).

⁵*McCormick v. City of Lawrence*, No. 02-2135-JWL, 2005 WL 1606595, at *2 (D. Kan. July 8, 2005) (citing 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, FEDERAL PRACTICE & PROCEDURE § 3069, at 355 (2d ed. 1997) and quoting *Ocelot Oil*, 847 F.2d at 1464 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948))).