

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

KAMAL K. PATEL,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-1168-D
)	
UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter is before the Court for review of the Supplemental Report and Recommendation issued October 9, 2009, by United States Magistrate Judge Gary M. Purcell [Doc. No. 303]. Judge Purcell recommends that Defendants' Motion for Summary Judgment on Privacy Act Claim [Doc. No. 286] be granted.¹ Judge Purcell finds that, viewing the undisputed facts in the light most favorable to Plaintiff, a reasonable jury would not find for Plaintiff on the sole remaining claim asserted in the First Amended Complaint, namely, a claim for damages under the Privacy Act of 1974, 5 U.S.C. § 552a *et seq.*, of failing to maintain accurate records and utilizing a false transfer request in violation of § 552a(e)(5).²

A review of the case file reflects no objection to the Supplemental Report nor request for additional time to object. As noted by Judge Purcell, Plaintiff's mail has been returned to the Clerk of Court as undeliverable since August 31, 2009. For this reason, the Court has delayed a decision for a substantial period of time. However, upon consideration of the case record and the facts stated in the Supplement Report regarding a prior motion to stay the case, the Court finds insufficient

¹ This motion addresses issues that remain pending under a prior dispositive motion [Doc. No. 224].

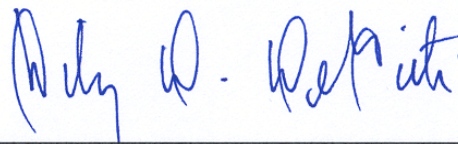
² This claim was reserved for decision by the Order of May 14, 2009 [Doc. No. 273], which adopted Judge Purcell's Report and Recommendation of February 19, 2009, on all other claims and issues.

reason for an exception to the court of appeals' "firm waiver rule." Plaintiff remains responsible for informing the Court of his changes of address. *See Theede v. United States Dep't of Labor*, 172 F.3d 1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection); *see also* W.D. Okla. R. LCvR5.4(a) (requiring written notice of a change of address).

Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Supplemental Report. Accordingly, for the reasons stated by Judge Purcell, the Court finds that summary judgment should be entered on Plaintiff's Privacy Act Claim.

IT IS THEREFORE ORDERED that the Supplemental Report and Recommendation [Doc. No. 303] is ADOPTED in its entirety. Defendants' Motion for Summary Judgment on Privacy Act Claim [Doc. No. 286] is GRANTED.³ A separate judgment on all claims shall be entered.

IT IS SO ORDERED this 18th day of December, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

³ This ruling disposes of the issues reserved for decision under Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment [Doc. No. 224]. Also, Plaintiff's Request to Withhold Answering Phantom Statement of Material Facts [Doc. No. 291] and Motion for Judicial Notice [Doc. No. 292] are moot and are, therefore, denied.