

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

JOHNNY SATURN,
Plaintiff

v.

**AUSTIN BERGSTROM
INTERNATIONAL AIRPORT, et al.,**
Defendants

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Case No. 1:20-CV-01176-LY-SH

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE**

Before the Court are Plaintiff Johnny Saturn’s Amended Complaint, filed December 1, 2020 (Dkt. 3); Defendant Target Corporation’s Rule 12(b)(6) Motion to Dismiss, filed January 26, 2021 (Dkt. 5); Defendant Intel Corporation’s Motion to Dismiss Pursuant to Rule 12(b)(6), filed February 19, 2021 (Dkt. 9); Defendant H-E-B, LP’s Rule 12(b)(6) Motion to Dismiss, filed February 19, 2021 (Dkt. 10); and Defendant BAE Systems, Inc.’s Motion to Dismiss First Amended Complaint Under Rule 12(b)(6), filed February 24, 2021 (Dkt. 13). The District Court referred all pending and future motions in this case to the undersigned Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1), Federal Rule of Civil Procedure 72, and Rule 1 of Appendix C of the Local Rules of the United States District Court for the Western District of Texas.

I. Background

On January 21, 2021, the Court ordered Plaintiff to submit either the filing fee of \$402 or a completed application to proceed *in forma pauperis* within thirty days. Dkt. 4. The Court also warned Plaintiff that failure to comply with the Order could result in dismissal for want of prosecution. *Id.*

Plaintiff failed to timely submit a filing fee or an application to proceed *in forma pauperis*. A district court may dismiss an action *sua sponte* for failure to prosecute or to comply with any court order under Federal Rule of Civil Procedure 41(b). *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir. 1988). Because Plaintiff failed to abide by a Court Order and to prosecute his case, the Magistrate Judge recommends that this case be dismissed.¹

II. Recommendation

The undersigned **RECOMMENDS** that the District Court **DISMISS** Johnny Saturn's case without prejudice pursuant to Rule 41(b) and **DISMISS AS MOOT** the Motions to Dismiss filed by Defendants Target Corporation's (Dkt. 5), Intel Corporation (Dkt. 9), H-E-B, LP (Dkt. 10), and BAE Systems, Inc. (Dkt. 13).

III. Warnings

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report and, except on grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C.

¹ Plaintiff has appeared in this Court before and thus had the opportunity to become familiar with its procedures. *See Saturn v. Austin Bergstrom Int'l Airport*, 1:20-cv-00442-LY (W.D. Tex. May 18, 2020) (dismissing case as frivolous under 28 U.S.C. § 1915(e)(2)).

§ 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 150-53 (1985); *Douglass v. United Servs. Auto. Ass'n*,
79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

SIGNED on February 25, 2021.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE