

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

**JOHN and DONNA WELLHAUSEN, as heirs of)
ERIC WELLHAUSEN, deceased,)**

Plaintiffs,)

v.)

**THE UNIVERSITY OF KANSAS and)
JOHN DOES 1-10,)**

Defendants.)

CIVIL ACTION

No. 05-2390-KHV

ORDER

On April 14, 2006, the Court entered an order which dismissed plaintiffs' claims against the University of Kansas without prejudice, based on Eleventh Amendment immunity. See Memorandum And Order And Order To Show Cause (Doc. #18). The Court further ordered plaintiffs to show cause in writing why they did not serve the summons and complaint on John Does 1-10 within 120 days from filing the complaint, and further show good cause in writing why the Court should not dismiss this action in its entirety, without prejudice, as to those defendants. See id.

On April 18, 2006, plaintiffs responded to the show cause order, stating that they have not served John Does 1-10 because they have not discovered their identity through discovery. See Motion To Show Cause (Doc. #20).¹ Plaintiffs further state that they "will not oppose dismissal of this case as to all defendants without prejudice so that the case can proceed in its entirety in state court." Id. In light of plaintiffs' concurrence, the Court will dismiss without prejudice the claims

¹ It is unclear why plaintiffs captioned their response as a motion.

against John Does 1-10.

IT IS THEREFORE ORDERED that as to John Does 1-10, this action be dismissed without prejudice. The Clerk shall enter judgment accordingly.

Dated this 27th day of April, 2006 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge