

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GERARDO VALTIERRA,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3161-SAC

CLAUDE CHESTER,

Defendant.

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner at the United States Penitentiary, Leavenworth, Kansas. By an order entered on October 26, 2010, the court granted plaintiff to and including November 23, 2010, to submit an initial partial filing fee and to amend the complaint to identify additional defendants and to explain the personal participation of each defendant. Plaintiff was advised that the failure to file a timely response might result in the dismissal of this matter without prejudice and without additional prior notice. There has been no response.

A federal court has the inherent power to act sua sponte to dismiss an action for failure to prosecute. *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962). Federal Rule of Civil

Procedure 41(b) authorizes the involuntary dismissal of an action for failure to prosecute or to comply with procedural rules or orders of the court. While the text of Rule 41(b) contemplates such dismissal upon the motion of a defendant, the rule has been interpreted to allow the sua sponte dismissal of an action. *Link, id.; Rogers v. Andrus Transp. Services*, 502 F.3d 1147, 1151 (10th Cir. 2007).

The court finds plaintiff has failed to prosecute this action and has been given adequate notice of the court's intention to dismiss this matter for lack of prosecution.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice for lack of prosecution.

IT IS FURTHER ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc.3) is denied as moot.

Copies of this order shall be transmitted to the parties.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 30th day of November, 2010.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge