

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

EARNEST EUGENE WALKER, JR.,

Petitioner,

v.

CASE NO. 17-3166-SAC

PAMELA C. PARKER, et al.,

Respondents.

MEMORANDUM AND ORDER

On September 22, 2017, the Court entered an Order to Show Cause directing petitioner to show why this matter should not be dismissed. Petitioner has filed a motion to voluntarily dismiss this matter (Doc. #11). The Court liberally construes this as a motion filed under Rule 41(a)(2) of the Federal Rules of Civil Procedure. Under Rule 41(a)(2), a district court may dismiss an action on the plaintiff's request on such terms as the court considers proper. Unless the order of dismissal states otherwise, the dismissal under Rule 41(a)(2) is a dismissal without prejudice.

The rule is intended "to prevent voluntary dismissals which unfairly affect the other side, and to permit the imposition of curative conditions." *Brown v. Baeke*, 413 F.3d 1121, 1123 (10th Cir. 2005) (quoting *Phillips USA, Inc. v. Allflex USA, Inc.*, 77 F.3d 354, 357 (10th Cir. 1996)). The courts normally allow a dismissal without prejudice "unless the defendant will suffer some plain legal prejudice." *Gonzales v. City of Topeka*, 206 F.R.D. 280, 282 (D. Kan. 2001) (quoting *Wimber By and Through Wimber v. Department of Social and Rehabilitation Services*, 156 F.R.D. 259, 261 (D.Kan. 1994)).

The Court has examined the record and grants the motion to dismiss this matter without prejudice. There has been no service of process, and thus defendants have not expended time or resources in this matter; likewise, petitioner has not delayed this matter or shown a lack of diligence.

IT IS, THEREFORE, BY THE COURT ORDERED petitioner's motion to dismiss this matter is granted, and this matter is dismissed without prejudice.

IT IS SO ORDERED.

DATED: This 20th day of November, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge