

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

BRETT F. HOGAN,

Plaintiff,

v.

CASE NO. 19-2075-SAC

TIMMY ANDERSON,

et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff is a pretrial detainee at the Marshall County Confinement Center in Marysville, Kansas. He brings this action under 42 U.S.C. § 1983, alleging cruel and unusual punishment in violation of the Eighth Amendment and due process violations. Before the Court are Defendants' Motions to Dismiss (Docs. 8, 14) under Fed. R. Civ. P. 12(b)(1)–(b)(6), and 12(c). Plaintiff has not responded to the motions, nor to an Order to Show Cause why these motions should not be granted for failure to respond (Doc. 16). The motion can therefore be granted for failure to file a response.

Plaintiff failed to file a response to the motion to dismiss and the time to do so has expired.¹ Under D. Kan. Rule 7.4,

Absent a showing of excusable neglect, a party or attorney who fails to file a responsive brief or memorandum within the time specified in D. Kan. Rule 6.1(d) waives the right to later file such brief or memorandum. If a responsive brief or memorandum is not filed within the D. Kan. Rule 6.1(d) time requirements, the court will consider and decide the motion as an uncontested motion. Ordinarily, the court will grant the motion without further notice.

¹See D. Kan. R. 6.1(d)(2) (requiring a response to a dispositive motion to be filed within twenty-one days).

D. Kan. Rule 7.4(b). A *pro se* litigant is not excused from complying with the rules of the court, and is subject to the consequences of noncompliance. *Ogden v. San Juan Cnty.*, 32 F.3d 452, 455 (10th Cir. 1994) (citing *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (insisting that *pro se* litigants follow procedural rules and citing various cases dismissing *pro se* cases for failure to comply with the rules)).

As a result of Plaintiff's failure to respond, the Court may grant Defendants' motions to dismiss as uncontested.

IT IS THEREFORE ORDERED BY THE COURT that Defendants' Motions to Dismiss (Docs. 8, 14) are granted.

IT IS FURTHER ORDERED that this matter is **dismissed with prejudice**.

IT IS SO ORDERED.

Dated in Topeka, Kansas, on this 15th day of May, 2019.

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