

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

**ANTONIO FLEMMING,**

**Plaintiff,**

**v.**

**CASE NO. 20-3098-SAC**

**REGINALD BAKER,**

**Defendant.**

**ORDER TO SHOW CAUSE**

Plaintiff filed this civil rights action under 42 U.S.C. 1983. On April 1, 2020, the matter was transferred to this Court from the Western District of Missouri. On the same day, the clerk of the court entered a Notice of Deficiency (NOD) (Doc. 6) directing plaintiff to either pay the \$400.00 filing fee or file a motion to proceed without prepayment of fees by May 1, 2020<sup>1</sup>. The NOD provides that “[i]f you fail to comply within the prescribed time, the Judge presiding over your case will be notified of your non-compliance, and this action may be dismissed without further notice for failure to comply with this court order.” (Doc. 6 at 1.)

Plaintiff is ordered to show good cause why this matter should not be dismissed without prejudice under Rule 41(b) of the Federal Rules of Civil Procedure for failure to comply with a court order. Rule 41(b) “authorizes a district court, upon a defendant’s motion, to order the dismissal of an action for failure to prosecute or for failure to comply with the Federal Rules of Civil Procedure or ‘a court order.’” *Young v. U.S.*, 316 F. App’x 764, 771 (10<sup>th</sup> Cir. 2009). “This

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<sup>1</sup> The Court notes that plaintiff filed a motion for leave to proceed in forma pauperis in the Western District of Missouri but did not submit a certified financial statement as required by the federal in forma pauperis statute, 28 U.S.C. 1915.

rule has been interpreted as permitting district courts to dismiss actions *sua sponte* when one of these conditions is met." *Id.* (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10<sup>th</sup> Cir. 2003)). "In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action without prejudice under Rule 41(b)." *Young*, 316 F. App'x at 771-72 (citation omitted).

Plaintiff has failed to submit the filing fee or a properly supported motion to proceed in forma pauperis within the time allowed. Therefore, the Court will direct him to show good cause why this matter should not be dismissed without prejudice under Rule 41(b).

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff is granted to and including **May 28, 2020**, to show cause why this matter should not be dismissed without prejudice under Rule 41(b).

**IT IS SO ORDERED.**

DATED: This 12th day of May, 2020, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge