

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

MICHEAL LEE ORTEGO,

Plaintiff,

v.

CASE NO. 20-3151-SAC

**KEVIN FRIEND,
Sheriff, Linn County,**

Defendant.

ORDER

Plaintiff, Michael L. Ortego, is an inmate at the Linn County Jail in Mound City, Kansas. Plaintiff filed this *pro se* § 1983 action alleging his constitutional rights have been violated as a result of conditions of confinement at the Linn County Jail.

On June 11, 2020, Mr. Ortego submitted a Motion to Dismiss asking the Court to dismiss the instant action without prejudice (ECF No. 6). The Court must construe liberally the June 11 motion because Mr. Ortego submitted the motion on his own behalf. *See Haines v. Kerner*, 404 U.S. 519, 520–21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Therefore, the Court construes the June 11 motion liberally as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Rule 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” No response has been filed by the defendant in this action. A voluntary

dismissal pursuant to Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. *See Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. *See id.*

IT IS THEREFORE BY THE COURT ORDERED that the motion filed by Plaintiff on June 11, 2020 (ECF No. 11) is **granted** and is construed as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

IT IS FURTHER ORDERED that the voluntary dismissal is effective as of June 11, 2020, the date the liberally construed notice of dismissal was filed in this action.

IT IS FURTHER ORDERED that this action is **dismissed without prejudice**.

IT IS SO ORDERED.

DATED: This 19th day of June, 2020, at Topeka, Kansas.

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