

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

MONTGOMERY CARL AKERS,

Plaintiff,

v.

KIM I. FLANNIGAN, et al.,

Defendants.

Case No. 5:20-cv-03311-HLT-TJJ

ORDER

Plaintiff, Montgomery Carl Akers, who is currently incarcerated at Marion-USP, brings this *pro se* civil rights case under *Biven v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). On December 23, 2020, the Court entered an Order (Doc. 4) denying Plaintiff’s motion to proceed *in forma pauperis*, and finding that Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g). The Court also examined the Complaint and found no showing of imminent danger of serious physical injury. The Order directed Plaintiff to submit the \$402.00 filing fee by January 15, 2021. The Court denied Plaintiff’s motion to reconsider. (Doc. 7.)

Plaintiff has failed to submit the filing fee by the January 15, 2021 deadline. The Court’s Order at Doc. 4 provides that if Plaintiff “fails to pay the full fee within the prescribed time, the Complaint will be dismissed based upon Plaintiff’s failure to satisfy the statutory district court filing fee required by 28 U.S.C. § 1914.” (Doc. 4, at 2–3.)

Rule 41(b) of the Federal Rules of Civil Procedure “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 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)). “This 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 (10th 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 (citations omitted).

Plaintiff has failed to submit the filing fee by the Court’s deadline. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.

THE COURT THEREFORE ORDERS that this action is **dismissed without prejudice** pursuant to Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.

Dated: January 21, 2021

/s/ Holly L. Teeter
HOLLY L. TEETER
UNITED STATES DISTRICT JUDGE