

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

MONTGOMERY CARL AKERS,

Plaintiff,

v.

CASE NO. 21-3237-SAC

**BARBARA VON BLANCKENSEE,
et al.,**

Defendants.

MEMORANDUM AND ORDER

Plaintiff, Montgomery Carl Akers, who is currently incarcerated at USP-Marion, brings this *pro se* civil rights case under *Biven v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The Court entered a Memorandum and Order (Doc. 3) denying Plaintiff's motion to proceed *in forma pauperis*, finding that Plaintiff is subject to the "three-strikes" provision under 28 U.S.C. § 1915(g). The Court examined the Complaint and found no showing of imminent danger of serious physical injury. The Court also granted Plaintiff until November 5, 2021, to submit the \$402.00 filing fee. The Court's order provided that "[t]he failure to submit the fee by that date will result in the dismissal of this matter without prejudice and without additional prior notice." (Doc. 3, at 3.) Plaintiff has failed to pay the filing fee by the deadline set forth in the order.

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 deadline. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.

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

IT IS SO ORDERED.

Dated November 8, 2021, in Topeka, Kansas.

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