

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JOHN LEATO

PLAINTIFF

v.

Civil No. 5:19-cv-05141

COLONY BRANDS, INC.

DEFENDANT

OPINION AND ORDER

Plaintiff, John Leato (“Leato”), filed this action for alleged violations of the Telephone Consumer Protection Act by the Defendant. Leato proceeds *pro se* and *in forma pauperis*.

By Order (ECF No. 5) entered on August 6, 2019, Leato was directed to file an amended complaint. The amended complaint was to be filed by August 27, 2019. Leato was advised that failure to comply with the Order “shall result” in the dismissal of the case.

To date, Leato has not filed an amended complaint. Leato has not sought an extension of time to comply with the Order. No mail has been returned as undeliverable.

The Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the ground that the plaintiff failed to prosecute or failed to comply with an order of the court. Fed. R. Civ. P. 41(b); *Line v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962)(stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with any court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986)(emphasis added). Additionally, Rule 5.5(c)(2) of the Local Rules for the Eastern and Western Districts of Arkansas requires parties appearing *pro se* to monitor the case, and to prosecute or defend the action diligently.

Therefore, pursuant to Rule 41(b), this Complaint should be and hereby is **DISMISSED WITHOUT PREJUDICE** based on Leato's failure to prosecute this case, his failure to obey the order of the Court, and his failure to comply with Local Rule 5.5(c)(2). Fed. R. Civ. P. 41(b).

IT IS SO ORDERED this 10th day of September 2019.

/s/ P. K. Holmes, III

P. K. HOLMES, III
U.S. DISTRICT JUDGE