IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAMON LAVON HORTON,

Plaintiff,

v.

ED MADDERN,

Defendant.

Case No. 16-cv-03187-DDC-DJW

MEMORANDUM AND ORDER DISMISSING CASE WITHOUT PREJUDICE

Pro se plaintiff Damon Horton brought this action against Ed Maddern, a corrections officer at El Dorado Correctional Facility.[1] In his Complaint, plaintiff asserts that defendant violated his Eighth Amendment rights by using excessive force against him. He also asserts that defendant battered him and thereby violated Kansas Administrative Regulation 44-12-324.

On April 28, 2017, the court dismissed plaintiff's Eighth Amendment claim and ordered him to show cause why the court should not dismiss his claim under Kansas Administrative Regulation 44-12-324 for lack of subject matter jurisdiction. Doc. 18. Plaintiff has filed no response to this order and the time for doing so has passed.

As the court explained in its April 28 order, plaintiff does not allege diversity jurisdiction, and Kansas Administrative Regulation 44-12-324 is a state law; so it provides no basis for federal question jurisdiction. *Id.* at 11–12. So, jurisdiction under either 28 U.S.C. § 1331 or 28

[1] Because plaintiff proceeds pro se, the court construes his pleadings liberally and holds them to a less stringent standard than those drafted by lawyers. *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). But the court does not assume the role of advocate for plaintiff. *Id.* Nor does plaintiff's pro se status excuse him from complying with the court's rules or facing the consequences of noncompliance. *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

U.S.C. § 1332 does not exist in this case. The court thus dismisses the Complaint for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that this action is dismissed without prejudice for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated this 8th day of June, 2017, at Topeka, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge