

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

JEFFREY L. MCLEMORE,

Plaintiff,

v.

CASE NO. 23-3248-JWL

JOLENE HETT,

Defendant.

MEMORANDUM AND ORDER

Plaintiff Jeffrey L. McLemore is a state prisoner currently housed at the Saline County Jail in Salina, Kansas. He filed this pro se § 1983 action, alleging that his constitutional right to access the courts has been violated. (Doc. 1.)

On December 20, 2023, the Court issued a memorandum and order explaining that the complaint failed to state a plausible claim for relief and that it sought, at least in part, unavailable relief. (Doc. 6.) The Court explained that these deficiencies left this matter subject to dismissal and granted Plaintiff to and including January 22, 2024, to file an amended complaint that cures all the deficiencies. *Id.* The memorandum and order cautioned Plaintiff that if he “does not timely file an amended complaint that cures the deficiencies discussed herein, this matter will be dismissed without further prior notice to Plaintiff.” *Id.* at 7. As of the date of this order, the Court has not received an amended complaint from Plaintiff.

The time in which Plaintiff was required to submit an amended complaint has passed without Plaintiff doing so. As a consequence, the Court concludes that this action should be

dismissed without prejudice for failure to state a plausible claim on which relief can be granted, for the reasons set forth in the Court's previous memorandum and order.¹

IT IS THEREFORE BY THE COURT ORDERED that this action is **dismissed without prejudice** for failure to state a claim on which relief can be granted.

IT IS SO ORDERED.

Dated on this 5th day of February, 2024, in Kansas City, Kansas.

s/ John W. Lungstrum
JOHN W. LUNGSTRUM
United States District Judge

¹ The Court also notes that this matter also is subject to dismissal because Plaintiff has failed to comply with the Court's order that he timely pay the initial partial filing fee or move for an extension of time in which to do so. (*See* Doc. 5 (ordering Plaintiff to pay an initial partial filing fee of \$4.00 on or before December 29, 2023).) 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. Appx. 764, 771 (10th Cir. 2009) (citing Fed. R. Civ. P. 41(b)).