

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

OSCAR E. WEIGANG, JR.,	)	
	)	
Plaintiff	)	
v.	)	1:21-cv-00271-NT
	)	
UNIVERSITY OF MAINE, et al.,	)	
	)	
Defendants	)	

**RECOMMENDED DECISION  
BASED ON PLAINTIFF’S FAILURE TO PROSECUTE**

On September 16, 2021, Plaintiff filed a complaint (ECF No. 1), but did not pay the filing fee or file a motion to proceed in forma pauperis.<sup>1</sup> On September 21, 2021, the Court ordered Plaintiff to pay the \$400 filing fee or file a completed in forma pauperis application. (Order, ECF No. 3.) The Court advised Plaintiff that if he did not pay the filing fee or file an application to proceed in forma pauperis, the Court could dismiss the matter. (*Id.*)

Because Plaintiff failed to pay the filing fee or file an in forma pauperis application, on November 9, 2021, the Court issued an Order to Show Cause. (ECF No. 10.) In the order, the Court established November 23, 2021, as the date by which Plaintiff must show cause in writing as to why he failed to comply with the Court’s order. The Court again advised Plaintiff that if he failed to show cause, the complaint could be dismissed. (*Id.*)

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<sup>1</sup> Plaintiff subsequently filed an amended complaint but did not pay the filing fee or file an application to proceed in forma pauperis. (Amended Complaint, ECF No. 9.)

In response to the Court's order, Plaintiff filed a motion for enlargement of time, or abeyance, to show cause. (Motion, ECF No. 11.) The Court granted in part the motion and extended the time for Plaintiff to show cause to December 8, 2021. (Order, ECF No. 12.) Plaintiff objected to the order. (Objection, ECF No. 13.) The Court overruled the objection on December 2, 2021. (Order, ECF No. 14.)

To date, Plaintiff has not paid the filing fee, submitted an application to proceed in forma pauperis, or filed a substantive response to the show cause order. Because Plaintiff has failed to show cause as ordered, I recommend the Court dismiss the matter.

#### **DISCUSSION**

“A district court, as part of its inherent power to manage its own docket, may dismiss a case sua sponte for any of the reasons prescribed in Fed. R. Civ. P. 41(b).” *Cintron-Lorenzo v. Dep't de Asuntos del Consumidor*, 312 F.3d 522, 526 (1st Cir. 2002) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 – 31 (1962)). Federal Rule of Civil Procedure 41(b) authorizes the Court to dismiss an action for a party's failure to prosecute and failure to comply with the Court's orders. Here, Plaintiff has (a) failed to comply with the Court's September 21, 2021, Order that required Plaintiff to pay the \$400 filing fee or file an Application to Proceed In Forma Pauperis (ECF No. 3), and (b) failed to show cause in accordance with the Court's Order to Show Cause. (ECF No. 10.) Plaintiff thus has failed to comply with two Court orders and has otherwise failed to prosecute the claim.

Given Plaintiff's failure to show cause, his failure to comply with the Court's orders, and his failure otherwise to prosecute the action, dismissal is warranted.

**CONCLUSION**

Based on the foregoing analysis, I recommend the Court dismiss the matter.

**NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison  
U.S. Magistrate Judge

Dated this 31st day of January, 2022.