

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKAROGER GALLAGHER,)
)
 Plaintiff,)
)
 v.)
)
 NEIL MILLER,)
)
 Defendant.)

4:12CV3251

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On August 16, 2013, the court conducted an initial review of Plaintiff's Complaint. (Filing No. [23](#).) It determined that Plaintiff had failed to state an Eighth Amendment claim upon which relief may be granted against Defendant in his official capacity because Plaintiff did not allege that a policy or custom caused a violation of his constitutional rights. (*Id.* at CM/ECF p. 3.) In addition, the court determined that Plaintiff had failed to allege facts sufficient to state a claim against Defendant under Title II of the Americans with Disabilities Act ("ADA"). (*Id.* at CM/ECF p. 5.)

Plaintiff filed an Amended Complaint on August 23, 2013. (Filing No. [24](#).) Plaintiff abandoned the ADA claim, and merely reiterated the allegations set forth in support of the Eighth Amendment claim. Plaintiff did not allege that an official policy caused a violation of his constitutional rights or that there was a continuing, widespread, persistent pattern of unconstitutional misconduct by Buffalo County or its employees. Indeed, Plaintiff alleges in his Amended Complaint that Defendant "is the so called Boss of the county jail" and that "all complaints about the jail go to him" (*id.* at CM/ECF p. 1), but he does not allege in his Complaint or Amended Complaint that he grieved any matter relating to the conditions of his confinement to Defendant. For these reasons, and for the reasons set forth in the court's Memorandum and Order dated August 16, 2013, this matter will be dismissed.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice for failure to state a claim upon which relief may be granted.
2. The clerk's office is directed to place the "28USC1915(g)_STR" flag on this matter.
3. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 11th day of October, 2013.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.